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In the Supreme Court of the United States

OCTOBER TERM, 1974

ARNOLD L. CRANE,

Petitioner,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS and CORBETTA CONSTRUCTION COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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In the Supreme Court of the United States

OCTOBER TERM, 1974

Appealed to Illinois Supreme Court, No. 45829
From Circuit Court, Cook County, Illinois, No. 71 L 9017
From Illinois Industrial Commission, No. 784 019

NO.

ARNOLD L. CRANE,

Petitioner,

VS.

INDUSTRIAL COMMISSION OF ILLINOIS and CORBETTA CONSTRUCTION COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

The Petitioner, Arnold L. Crane, respectfully prays that a writ of certiorari issue to review the Judgment and Opinion of the Illinois Supreme Court entered in this proceeding on March 29, 1974.

OPINIONS BELOW

The Opinion of the Illinois Supreme Court entered on March 29, 1974, appears in the Appendix as "A", pages App. 1-App. 9.

Illinois Supreme Court Denial of Petition for Rehearing, dated May 31, 1974, appears in Appendix as "B", pages App. 10.

Judge Downing of Circuit Court of Cook County, Illinois Affirmed the Industrial Commission Decision on February 9, 1973—Transcript appears in Appendix as "C", pgs. App. 11- App. 12.

Industrial Commission of State of Illinois—Decision on Review appears in Appendix as "D", pgs. App. 13-App. 15.

State of Illinois Industrial Commission—Notice of Decision of Arbitrator—dated March 4, 1970, appears in Appendix as "E", pgs. App. 16-App. 19.

JURISDICTION

A timely Application for Extension of Time to File a Petition for Writ of Certiorari was allowed and this Petition for a Writ of Certiorari was filed before October 15, 1974 as ordered by this Court on July 25, 1974. This Court's jurisdiction is invoked under 28 U.S.C., Sec. 1257(3).

QUESTIONS PRESENTED

1. Whether the alleged overt acts constitute a continuing or renewable conspiracy and is the federal case moot where these overt acts continue after judgment, specifically:

   (a) Respondent's attorney Cohn's letter to insurance carrier dated September 12, 1972, inadvertently mailed to petitioner.

(b) State Records missing—Circuit Court, Cook County, Illinois Case #71 L 9017—Arnold L. Crane vs. Industrial Commission of Illinois, et al.

(c) Federal Records missing—U. S. District Court, Seventh Circuit, Case #71 C 2014—Arnold L. Crane vs. State of Illinois Industrial Commission, et al.

2. Whether the Illinois Industrial Commission and the Courts can refuse to enforce a valid Act and Illinois Statute, thus depriving all injured workers what is theirs by law.

3. Whether the cumulative effect of these alleged errors constitute a denial of due process and equal protection as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

4. Whether injured workers have a right to a pretermination hearing before termination of medical treatment by the carrier.

5. Whether the Illinois Industrial Commission and the Courts can completely disregard perjury and subornation of perjury in rendering its decision and, whether the decision is against the manifest weight of the evidence.

6. Whether the refusal of the Industrial Commission of Illinois to allow petitioner the same relief as was afforded the respondent constitutes a wilfull, invidious and purposeful discrimination, and whether the fraudulent misrepresentation of the transcript charges by Moulin, Kern and Cohn acting in concert, and the forcing of petitioner to pay these misrepresented charges constitutes an overt act in furtherance of a conspiracy.

STATUTORY PROVISIONS INVOLVED

1. Illinois Workmen's Compensation Act (As Amended effective July 1, August 28, October 9 and October 13, 1969).

Sec. 6(b). *Employers to post notices—report of injuries—notice of accident-limitations*— . . . pg. 18: "Every employer subject to this Act shall send to the Commission in writing an immediate report of all accidental injuries arising out of and in the course of the employment and resulting in death. Every such employer shall also report between the 15th and 25th of each month to the Commission all accidental injuries for which compensation has been paid under this Act, which injuries entail a loss to the employee of more than one week's time. In case the injury results in permanent disability, a further report shall be made as soon as it is determined that such permanent disability has resulted or will result from such injury. All reports shall state the date of the injury, including the time of day or night, the nature of the employer's business, the name, address, the age, sex, conjugal condition of the injured person, the specific occupation of the injured person, the direct cause of the injury and the nature of the accident, the character of the injury, the length of disability, and, in case of death, the length of disability before death, the wages of the injured person, whether compensation has been paid to the injured person, or to his legal representative or his heirs or next of kin, the amount of compensation paid, the amount paid for physicians', surgeons' and hospital bills, and by whom paid, and the amount paid for funeral or burial expenses, if known. The making of such reports releases the employer from making such reports to any other officer of the State. (Ch. 48, Sec. 138.6, Ill. Rev. Stats. 1973-pgs. 282, 283.)

2. Sec. 8(a). *Amount of Compensation—nonfatal cases.* p. 25:

"The employer shall provide the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury.

The employee may elect to secure his own physician, surgeon and hospital services at his own expense." (Ch. 48, Sec. 138.8(a) Ill.Rev. Stats. 1973-pg. 286.)

3. Sec. 8B, Par. 5, pg. 28:

"All compensation provided for in this Section, other than in case of pension for life, shall be paid in installments at the same intervals at which the wages or earnings of the employee were paid at the time of the accident. If this is not feasible, then the installments shall be paid weekly. All payments of compensation shall be made not later than 2 weeks after the interval for which compensation is payable." (Ch. 48, Sec. 138.8B(5), Ill.Rev.Stats. 1973-pg. 287).

4. Sec. 12. *Physical Examinations.* p. 40:

"An employer requesting such an examination, of an employee residing within the State of Illinois, shall pay in advance of the time fixed for the examination sufficient money to defray the necessary expense of travel by the most convenient means to and from the place of examination, and the cost of meals necessary during the trip and if the examination or travel to and from the place of examination causes any loss of working time on the part of the employee, the employer shall reimburse him for such loss of wages upon the basis of his average daily wage. Such examination shall be made in the presence of a duly qualified medical practitioner or surgeon provided and paid for by the employee, if such employee so desires." (Ch. 48, Sec. 138.12, Ill.Rev. Stats. 1973-pg. 292).

5. *U. S. Code Annotated, Constitution Amendment*, pg. 33:

Amendment XIV. Citizenship; Privileges & Immunities; Due Process, Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement.

> Sec. 1. All persons born or naturalized in the United States, and subject to jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of Citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> *U. S. Code Annotated.*

6. 42 U.S.C.A., Sec. 1983. *Civil action for deprivation of rights.* pg. 250:

> "Every person who, under color of any statute ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

7. 42 U.S.C.A., Sec. 1985. *Obstructing Justice; Intimidating party, witness, or juror.* Pgs. 12, 13:

> "(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified,

or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

8. *National Labor Relations Board, Labor Management Relations Act, 1947, As Amended September 14, 1959.*

Sec. 7. *Rights of Employees.* Pgs. 107, 108:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

UNFAIR LABOR PRACTICES

9. Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7: * * *"

10. Ch. 18 U.S.C.A., Sec. 2071. *Concealment, removal, or mutilation generally.* Pg. 249:

(a) Whoever willfully and unlawfully conceals, removes mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than $2,000 or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same,

shall be fined not more than $2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States."

11. Ch. 18 U.S.C.A., Sec. 1509. *Obstruction of court orders.* Pg. 599:

"Whoever, by threats or force, willfully prevents, obstructs, impedes, or interferes with, or willfully attempts to prevent, obstruct, impede, or interfere with, the due exercise of rights or the performance of duties under any order, judgment, or decree of a court of the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both. No injunctive or other civil relief against the conduct made criminal by this section shall be denied on the ground that such conduct is a crime."

12. Ch. 38, Sec. 31-4.—*Obstructing Justice.* (Ill.Rev. Stat.) Pg. 1794:

"A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he knowingly commits any of the following acts: (a) Destroys, alters, conceals, or disguises physical evidence, plants false evidence, furnishes false information; * * *"

13. Ch. 38, Sec. 32-2.—*Perjury.* (Ill.Rev.Stat.) Pgs. 1794, 1795:

"(a) A person commits perjury when, under oath or affirmation, in a proceeding or in any other matter where by law such oath or affirmation is required, he makes a false statement, material to the issue or point in question, which he does not believe to be true.

(b) Proof of Falsity. An indictment or information for perjury alleging that the offender, under oath, has made contradictory statements, material to the issue of point in question, in the same or in different proceedings, where such oath or affirmation is required,

need not specify which statement is false. At the trial, the prosecution need not establish which statement is false.

(c) Admission of Falsity. Where the contradictory statements are made in the same continuous trial, an admission by the offender in that same continuous trial of the falsity of a contradictory statement shall bar prosecution therefor under any provisions of this Code."

14. Ch. 38, Sec. 32-3.—*Subornation of Perjury.* (Ill. Rev.Stat.) Pg. 1795:

"(a) A person commits subornation of perjury when he procures or induces another to make a statement in violation of Section 32-2 which the person knows to be false."

15. Supreme Court Rule 321, Ill. Rev. Stat. 1967, C110A, Sec. 321.

STATEMENT OF THE CASE

Petitioner was a Union carpenter in 1964. Prior to petitioner's employment with Corbetta Construction Company there was a labor dispute between Corbetta, Joseph Building Supplies/Joseph Lumber Company and the Chicago District Council of Carpenters. Corbetta was subcontracting outside carpenter work for making concrete forms, beam sides, bottoms and miscellaneous carpenter work, to Joseph who was using inside carpenter labor at a lower rate of pay, thus depriving the outside carpenters of work that was theirs under the Collective Bargaining Agreement between the District Council of Carpenters of Chicago and the Builders Association of Chicago.

Due to the labor dispute and the threat of an impending strike, Corbetta sent its own men out to Joseph to do the carpenter work.

One of the grievances of the labor dispute at Joseph was the dangerous and unsafe nature of the working conditions the carpenters were subjected to. There were four (4) Corbetta carpenters, including petitioner (although there were five (5) carpenters on the job), carrying forms that were made by the carpenters. These forms weighed from 500 to 600 pounds. Corbetta's working foreman refused to do anything about the carpenter's complaints and refused to get anymore carpenters to help lift and carry the forms. Occasionally the foreman of Joseph helped in carrying the forms. *Affidavit of Petitioner* filed 12/1/71 in the U. S. Dist. Ct. EXH. 1, with the attachments of *Joseph's Affidavits*, EXH. 2; *Al Maske* (carpenter and witness to accident) *Affidavit*, dated 9/7/68, EXH. 3, and *Joseph Garril* (carpenter and witness to accident) *Affidavit*, dated 8/24/68, EXH. 4 appear in the Appendix pages 100A-114A.

There were no medical facilities at Joseph's for Corbetta's employees and petitioner was sent back to the Tishman-Gateway project (where Corbetta was a sub-contractor) on Madison & Canal Streets, Chicago, Illinois, for medical attention.

Sometime later petitioner returned to work of his own volition while still under the care of the carrier's doctor (Dr. Rabin) and was given light work as a result of his back injury.

Petitioner and the other carpenters were attempting to modify working conditions which they considered to be dangerous and unsafe. The unsafe working conditions were constantly discussed by the carpenters with the foreman and petitioner was being urged to do something about the safety conditions since he was the one that was injured.

These discussions among the carpenters led to the unlawful discharge of petitioner for protected concerted activities under Section 7 of the National Labor Relations Act and/or the alleged conspiracy between the employer and the carrier.

At the time of petitioner's discharge he was still receiving medical treatment. After seven weeks of medical treatment by Dr. Rabin, the carrier's only treating doctor, petitioner was discharged as being completely cured and never instructed by Dr. Rabin to return.

The firings of injured workers were so widespread among the carpenter trade that the Chicago District Council of Carpenters came to a Joint Agreement with the Builders Association of Chicago to stop the alleged conspiracy that was practiced by the employers and the insurance carriers.

The Joint Agreement between Builders Association of Chicago, Inc. and Chicago District Council of Carpenters, Cook, Lake and DuPage Counties, Illinois U.B. of C. & J. of A. AFL-CIO. For the Period June 1, 1967 through May 31, 1972. Article VI, page 10, Sec. 6.10 states:

> "In the event an employee is injured in the course of his employment, he shall not be dismissed from such employment because of his injury, nor shall he be dismissed during the period of medical care required by said injury, unless there is no work available with his employer, or unless his dismissal is due to conditions beyond the control of the employer." (Pet's Exh. #58 & #59 received into evidence, pgs. TR 265-266) Appears in Appendix as EXH. 5, pgs. 115A-117A.

The above Agreement was received into evidence, yet on direct examination of Charles A. Thompson, Secretary-Treasurer of the Carpenters District Council, (TR 390) when petitioner asked him:

"Q. What are some of the big changes that have been made in the new rules from June 1, 1967 to May 31, 1972?"

Cohn objected and the Arbitrator sustained. (Louis J. Cohn, Attorney for respondent, Consolidated Mutual Insurance Company (Corbetta Construction Company). *Thompson's Affidavit*, EXH. 6, App. pgs. 118A-119A. Letter dated 9/17/71 from *The Lombard Company* relative to the above Joint Agreement Sec. 6.9 & 6.10 is EXH. 7. App. pg. 120A.

As a result of the medical discharge by Dr. Rabin, without notice of pretermination of medical care, and refusal of the carrier to provide continued needed medical treatment, petitioner secured the services of his own physicians.

In December of 1964 petitioner retained Douglas F. Stevenson as counsel to represent him to safeguard all of petitioner's legal rights, both state and federal.

Stevenson is a partner in a firm that does labor law work and his firm is completely knowledgebale in all phases of labor law and Stevenson's specialty is workmen's compensation for defendants as evidence by EXH. #60, App. pgs. 325A-327A. Stevenson was an alleged co-conspirator in allowing the carrier to fabricate the disputed accident and the non-existent fabricated offer of medical treatment by the carrier.

Even though Stevenson was well qualified, he allowed the statute of limitations to run before the National Labor Relations Board, thus depriving petitioner of filing an alleged unfair labor practice charge against his employer.

Further, Stevenson refused to request medical treatment for petitioner even though his physical condition was still deteriorating.

On March 24, 1965 Stevenson wrote to Dr. Carlo Scuderi, petitioner's physician and said, in part:

> "* * * . . . I have done nothing in respect of his claim, other than to advise him to seek competent medical treatment."
> "* * * . . . I should take some legal steps to protect his rights." EXH. 8, App. pg. 121A.

On November 2, 1965 Dr. Scuderi wrote to Stevenson and we quote:

> "* * * . . . I have no way of knowing how much future care he is going to need." EXH. 9, App. pg. 122A.

This letter was written approximately 405 days after the date of Accident and injury on September 24, 1964.

Thirteen (13) months after petitioner's accident and injury Stevenson negotiated a settlement of $3,000 even though petitioner's condition was deteriorating and he was still unable to work.

Petitioner discharged Stevenson on February 4, 1966 and Stevenson claimed a lien which made it practically impossible for petitioner to retain other legal counsel.

As the sole proximate result of the accident and injury, on July 26, 1966 (approximately 671 days after the accident and injury on September 24, 1964), a spinal fusion was performed on petitioner by Dr. Janes of the Mayo Clinic at Rochester, Minnesota.

Stevenson reentered the case on August 18, 1967 and at that time advised petitioner that he also performed legal services for the carrier (in this case) in Indiana but that the carrier had no objection to his handling petitioner's case in Illinois. To the best of petitioner's knowledge Stevenson represented the carrier in Indiana prior to the time petitioner first retained him as counsel in December 1964. EXH. 10, App. pg. 123A.

On October 11, 1967 Stevenson withdrew from the case at the suggestion of his partners stating that he could not represent petitioner in a claim in which another client of their office (respondent's insurance carrier) was involved. EXH. 11, App. pgs. 124A-125A.

On January 10, 1968 petitioner retained Jack Sachs as legal counsel. During one of their meetings, Sachs informed petitioner that Cohn "thought" a letter had been sent petitioner by someone offering medical attention petitioner needed as a result of the accident. On April 3, 1968 petitioner wrote Sachs for a copy of this letter. EXH. 12, App. pg. 126A.

On April 24, 1968 Sachs withdrew as petitioner's counsel.

On August 28, 1968 Sachs answered petitioner's letter of April 3, 1968, stating that sometime betwen March 4, 1968 and April 1, 1968, (approximately 1,285 days from the date of the accident and 1,231 days after petitioner was discharged as being well by Dr. Rabin) Cohn informed him of this "thought" and at that time he asked Cohn to corroborate this "thought" on his part. (TR 414-415). EXH. 13, App. pg. 127A.

The date of petitioner's accident was September 24, 1964. The record was commenced on October 24, 1967 and the actual hearings at the Illinois Industrial Commission began August 6, 1968 (approximately 1,413 days after the accident). Respondent's attorney, Cohn, testified (TR 112) that he received the file on the case on April 13, 1965 which was approximately 1,211 days from April 13, 1965 to August 6, 1968.

The carrier insisted that a record be made and the carrier contested and disputed the alleged accident throughout seventy-five pages of pre-hearing before the Industrial Commission; the only thing Cohn would stipulate to was the existence of the relationship of employer and employee; that they received notice of an *alleged accident* and then paid seven weeks of compensation at the rate of $52 per week for a total of $364 (TR 72) between 9-25-64 and 11-16-64 (date of petitioner's discharge by carrier's doctor Rabin from further medical care).

Petitioner was unable to secure the services of competent counsel and refused to settle (TR 51). Petitioner continuously objected and protested to any action that would force him to go to trial without proper counsel (TR 13), however, petitioner had to try his case pro se or have it dismissed by the Arbitrator for want of prosecution due to the insistence of the carrier.

The Arbitrator stated that the only thing stipulated to is that petitioner and respondent were operating under Illinois Workmen's Compensation Act on September 23, 1964 and that a relationship existed between employee and employer on that date and all other matters are in issue and subject to proof. (TR 73-74)

The fifth question put to respondent's attorney, Cohn, as a witness was:

> "Q. * * * Were you ever notified that there was an accident?
>
> A. Notified that an Application for Adjustment of Claim had been filed, *indicating there had been an accidental injury*, and that notice was filed within the time required by law." (TR 75)

On direct examination Cohn repeatedly and vehemently testified that he didn't know the date when petitioner was discharged as being well and it was impossible for him to find out (TR 98), yet he knew that the last check that was issued to petitioner was up through November 16th and issued on November 23rd. He also testified that he didn't know if he should have that information (TR 102) and even though he testified that he had the doctor's reports with him, petitioner was not entitled to examine them. (TR 78)

Cohn testified regarding a letter dated January 21, 1965 written by the carrier to Dr. Moore at Billings Hospital that he didn't know why it was referenced "Date of Accident: 9-24-64" as he couldn't probe the mental processes of a third party and he couldn't answer the question. (TR 457) EXH. 58, App. pg. 323A.

Cohn further testified that petitioner stopped going to the doctors in October of 1964 and never returned to the company doctors after that. (TR 98) By knowing the date the last check was issued on November 23rd, for the period ending November 16th, he automatically knew that petitioner had been discharged on that date (TR 102) and not in October of 1964 as he testified on TR 98.

Cohn specializes in workmen's compensation in Illinois and, therefore, is completely knowledgable as to all facets of the Workmen's Compensation Act and is certainly knowledgable enough to know that when a check is issued through the 16th, and he previously testified that it was the *LAST* check, that the payments then cease. (TR 102)

No accident report was ever filed by respondent on petitioner's accident and injury as prescribed by state law. For the convenience of the court, cited below is a portion

of Respondent's attorney Cohn's testimony on direct examination:

> "Mr. Crane: Q. Does anybody have to file one?
> Mr. Cohn: I object to that question, Your Honor.
> The Arbitrator: Overruled. Well, you stated that you are a lawyer, Mr. Cohn, and this is a question presented to you, and I presume as a practicing attorney before this Commission you are well versed in what the law of the Commission is.
> The Witness: On undisputed lost time, compensable accident the carrier is required to file notice with the Commission if there is no dispute.
> Mr. Crane: Q. It doesn't say that in the rules. Are those your rules?
> A. Those aren't my rules. That is my interpretation of what I understand the rules to be." (TR 80-86).

Section 6(b) of the Illinois Workmen's Compensation Act states on page 18, in part:

> "Every employer subject to this Act shall send to the Commission in writing an immediate report of all accidental injuries arising out of and in the course of the employment and resulting in death. *Every such employer shall also report between the 15th and 25th of each month to the Commission all accidental injuries for which compensation has been paid under this Act, which injuries entail a loss to the employee of more than one week's time.* * * *"

On *December 5, 1966,* Cohn replied to Petitioner's request of *December 1, 1966* for a copy of the accident report, and stated that any report petitioner wished should be available with the Department of Insurance in the Accident Report Division. (Exh. #48 & #50. TR 252, 254) EXH. #14 & #15, App. pgs. 128A-129A.

Copies of Respondent's Accident reports #60A and 60B, TR 323, from the Accident Division between September 1964 and up until September 9, 1968 did not show petitioner's name on any of them. EXH. #16, App. pgs. 130A-131A.

Cohn testified that he remembered the letter (EXH. #15) App. pg. 129A, and acknowledged that it was his signature on the letter.

According to Cohn's interpretation of the Act (TR 80, 81) and his testimony on direct examination:

> "An accident report is filed if there is a compensable injury which is *undisputed;*"

respondent would not have filed an accident report on petitioner since they *disputed* the accident. Yet, in Cohn's letter of December 5, 1966, approximately 804 days after the date of petitioner's accident and injury, he advised petitioner that he could get a copy of any report he wished from the Department of Insurance in the Accident Report Division. (TR 323)

On petitioner's cross examination of Phillips (TR 1149-1150, 1151) as to why an accident report had never been filed, Cohn objected strenuously and the Arbitrator sustained the objection referring to that specific point as to why an accident report was never filed. (TR 1151)

Cohn repeatedly interrupted with objections in an attempt to educate or lead his witness and to destroy the continuity of the cross examination.

> "The Arbitrator: Well, at this juncture the Arbitrator has no control over that. Whether in fact an accident report was filed or was not filed by the company is not germane to these issues here before the Arbitrator at this time.

The fact, if they are required to file an accident report and in fact didn't this is not the proper form for that. That would probably be taken before the Commission itself. The Arbitrator himself has no authority or jurisdiction to make any ruling in that regard, if the company is in violation of some requirement of the Industrial Commission and the Workmen's Compensation Act.

The proper form for that determination would be the Commission itself. All the Arbirtator has the power to do is hear the facts, hear the evidence on an accident, if one occurred, and the disability of the injured man, if there is a disability. This question is properly before the Commission, so if you want—" (TR 85, 86)

Petitioner's letter to Chairman Carey dated 11/1/65 (Exh. #39) and Chairman Carey's letter to petitioner dated 11/5/65 (Exh. #40a) were received into evidence and appear as EXH. #17 & #18 in App. pgs. 132A-133A.

In the instant case petitioner was endeavoring to have Cohn testify regarding the statements he made to Sachs, petitioner's former attorney, such as: "Didn't you tell Mr. Sachs that Consolidated Mutual offered me more medical attention?" Cohn objected and moved to strike any conversation which was had, based upon the attorney-client relationship, negotiation or discussion of this case with any attorney. The Arbitrator sustained the objection (TR 93).

Petitioner again tried to elicit some pertinent testimony from Cohn (TR 94, 95):

"Mr. Crane: Mr. Cohn stated to Mr. Sachs that Consolidated Mutual—

Mr. Cohn: Objection, and move—

Mr. Crane: —offered me—

Mr. Cohn: —to strike any volunteered statement as being hearsay, or any conversation held between attorneys.

The Arbitrator: I want to hear the question. I haven't heard what the question was.

Mr. Cohn: He began to say, didn't you tell Mr. Sachs, I don't want that in the record.

Mr. Crane: I think it should be in the record.

The Arbitrator: As I said, Mr. Crane, the conversation between attorneys regarding the discussion of possible settlement of the case or possible disposition of the case—

Mr. Crane: We are talking about more medical attention, I needed.

Mr. Cohn: Objection, and move to strike that volunteered statement.

Mr. Crane: We are going to get no place, I can tell you that right now. You made a statement to Jack Sachs that they offered me more medical attention.

Mr. Cohn: Object, and move to strike that volunteered statement from the petitioner, Your Honor.

'The Arbitrator: Sustained. We already ruled on that Mr. Crane. Those matters are not properly before the Arbitrator.'"

Petitioner recalled Cohn to the witness stand and he declined to testify, whereupon the Arbitrator asked him if he was declining to testify under subpoena and he answered:

"Mr. Cohn: I don't know. I have to ask a lawyer about that." (TR 325)

Petitioner and Cohn discussed his testifying regarding Cohn's conversations with Sachs and Cohn stated that it wouldn't be germane to the issue and:

"Mr. Cohn: I wouldn't testify to that anyway. Go ahead, next. That's after the fact anyway." (TR 327)

Cohn objected to the admission into evidence of the letter written by Sachs, dated 8/28/68, EXH. #13 App. pg. 127A, regarding the alleged conversation between Cohn and Sachs relative to the fabricated offer of medical care. The Arbitrator sustained the objection and suggested that Sachs be asked to testify voluntarily but Sachs refused. (TR 353-357)

When Cohn was asked to testify the second time he refused, saying in part:

> *"I waived it voluntarily at that time. Since that time I have received certain instructions from my principal in regard to the conduct of the trial."*

For the convenience of the court, cited below is a portion of Cohn's testimony on direct examination:

> "Mr. Crane: Q. Where did you get this idea that the insurance company offered me medical attention, when all along you have been denying that there was an accident?
>
> Mr. Cohn: I don't know how to answer that question. Object on the ground that it is not an answerable question.
>
> Mr. Crane: Q. You don't want to answer anything, is that it?
>
> Mr. Cohn: I made an objection.
>
> The Arbitrator: Sustained.
>
> Mr. Crane: Q. Are you going to answer anything?
>
> A. I will answer those questions I am legally able to.
>
> Q. Where did you get the idea that the insurance company offered me medical attention? You had this thought between March 4, 1968 and April 1, 1968?
>
> Mr. Cohn: To that I make two objections, Your Honor. Number one, he is attempting to probe my mental process. Number two, he is asking me questions in regard to matters that are privileged between my client and myself.

Mr. Crane: He had this thought, Mr. Arbitrator. He didn't have this thought when Doug Stevenson was here.

The Arbitrator: Objection sustained.

Mr. Crane: Don't you want him to answer anything? I am asking you, Mr. Arbitrator, don't you want him to answer anything? This is germane to the issue, isn't it?

The Arbitrator: As I said, Mr. Crane, the Arbitrator is the proper authority to determine what is or is not germane. When he rules on an objection he either sustains or overrules the objection on the basis as to whether it is material." (TR 414, 415)

When petitioner attempted to testify as to his conversation with Sachs regarding the fabricated medical offer, we quote (TR 581-582):

"Mr. Crane: I met Mr. Sachs over in his office one day and he informed me that—

Mr. Cohn: Is this your testimony?

Mr. Crane: This is my testimony.

Mr. Cohn: I am objecting—

Mr. Crane: —and he informed me—

Mr. Cohn: Object to any conversation with Mr. Crane and his attorney.

Mr. Crane: —and he told me—

The Arbitrator: Wait a minute. The objection is sustained. As I stated to you earlier, Mr. Crane, if you want to bring in Mr. Sachs for any testimony that you might have in this matter—

Mr. Crane: This is direct testimony of mine regarding a conversation that took place.

Mr. Cohn: It is not evidentiary. I won't agree to any conversation you had with your attorney or anybody else outside the presence of the respondent.

The Arbitrator: This is hearsay, Mr. Crane."

The following exchange took place between the petitioner and the arbitrator (TR 736-737):

> "Mr. Crane: May I have permission of this court to bring in Mr. Jack Sachs in for proof of exactly what Mr. Cohn said.
>
> The Arbitrator: As I informed you before, Mr. Crane, this isn't the proper body for that.
>
> Mr. Crane: The proper body—
>
> The Arbitrator: Don't argue with me. The arbitrator is aware of his duties, and the Arbitrator has tried to hear this case. I can't get involved in all these other things. I have too much. I am willing to hear this case. I spent a lot of time on it, and now if you are willing to proceed fine. To go into these extraneous matters I don't have the time."

Sachs refused to testify voluntarily and further efforts to get him to testify were of no avail, thus making it impossible for petitioner to clarify precisely the statements that Cohn made regarding the fabricated medical offer. Furthermore, petitioner was not allowed to testify to corroborate the statements that Cohn made and Cohn refused to testify regarding the subject matter.

At one point in the hearing, petitioner remarked that he did not understand the rules and Cohn stated that the rules are the rules. It is not a matter of your liking them, it is not a matter of your understanding them. (TR 725)

In the instant case *Crane* v. *Ind. Co.*, 311 NE 2d 156 (1974), on pg. 159, the court said:

> "* * * After reviewing the transcript of the proceedings in its entirety, it is apparent that the arbitrator, recognizing the claimant's handicap in appearing pro se, did all he could to assist him in the presentation of his case, and the claimant's argument that the arbitrator engaged in prejudicial and improper conduct is clearly without merit."

On November 12, 1968 Cohn put his case in chief on with the exception of the medical witnesses and cross examined petitioner. The respondent brought in no witnesses to rebut any of the testimony elicited or given by petitioner. At the end of the cross examination of petitioner, the Arbitrator states on TR 721 that: "We will proceed to the medical aspect of the case."

The only thing that was left was the medical testimony, yet the Arbitrator allowed respondent the privilege, over petitioner's standing objection (TR 1065), of bringing in a lay witness with the alleged fabricated memorandum as evidence.

On January 19, 1970 respondent offered into evidence an alleged fabricated memorandum that was never made available to petitioner or any of his attorneys. (Resp. Exh. #13, TR 1068, 1069) From the date of the accident and injury to January 19, 1970 was approximately 1,578 days. Appears in App. as EXH. #19, pg. 134A.

For the convenience of the court, we cite the "undated" memorandum, respondent's Exh. #13, in full: (134A)

> "Clmt appeared in office—was dissatisfied with Dr. Shafers opinion that he could work. Wanted to see another MD—Advised we could not send him to another MD—Stated he was going to his family MD at Billings—Told him we would not be responsible for any bills."

Billings is a teaching institution where all the doctors are specialists and there are no family physicians. The only physician being seen at Billings at the time of petitioner's accident and injury in September, 1964, was petitioner's wife's gynecologist at Lying-In Hospital, which is a hospital for women only and is one of a group of hospitals that also includes Billings Hospital, at the Uni-

versity of Chicago Clinics. The court no doubt is aware that gynecologists do not render treatment to male patients.

Phillips testified on direct examination (TR 1068):

> "A. Mr. Crane was dissatisfied with Dr. Shafer's treatment and Dr. Shafer had released him to return to work and he requested that we send him to another doctor.
>
> Q. What did you tell him at that time?
>
> A. We referred—*well, we told him that he could see Dr. Shafer again but not for any further treatment by any other doctor.*"

For the convenience of the Court we cite a letter from Dr. Shafer to Dr. Eugene Lutterbeck of the Chicago Medical Society, dated September 21, 1965, received into evidence as Pet.'s Exh. #18, TR 204, and appears in App. pg. 135A as EXH. #20:

> "I examined Mr. Crane in my office on October 26, 1964, and he was examined by my partner on May 14, 1965. Both examinations were carried out at the request of the Consolidated Mutual Insurance Company and reports covering Mr. Crane's examination were sent to that company. I feel quite certain that the insurance company will be happy to give Mr. Crane any information he so desires." Dr. Lutterbeck's letter with EXH. #20 as an attachment appears in App. as EXH. #21, pg. 136A.

In Phillips' fabricated memorandum it states that petitioner was dissatisfied with Dr. Shafer's "opinion" that he could work. Phillips testified that petitioner was dissatisfied with Dr. Shafer's "treatment" (TR 1068). "Opinion" and "treatment" are definitely not the same thing.

Phillips also testified on cross examination (TR 1153-1154):

"Q. Can you tell the Court what treatment Dr. Shafer gave me?

A. I don't recall what treatment he gave you. I know he treated you for approximately an additional month."

After petitioner saw Dr. Shafer on October 26, 1964 he was still in need of medical treatment and was instructed to go back to Dr. Rabin, the treating doctor, for further physical therapy and medical treatment until the final discharge as being well, November 16, 1964. (TR 140)

During Cross examination of Dr. Rabin, the Arbitrator took judicial notice of the fact of the number of days from September 25, 1964 to November 16, 1964 that petitioner was treated by Dr. Rabin. (TR 1020)

Howard Phillips further testified on cross examination (TR 1184, 1185, 1186):

"A. The doctors I sent you to were treating doctors, not examining doctors.

Q. Dr. Meltzer was a what?

A. A treating doctor.

Q. Dr. Meltzer was a treating doctor or an examining doctor?

A. A treating doctor.

Q. When did Dr. Meltzer treat me?

A. You were authorized to be treated by Dr. Shafer's office. You went to him apparently twice.

Q. What is a treating doctor?

A. A treating doctor is a doctor that treats.

Q. What is an examining doctor?

A. A doctor that examines on our behalf concerning the nature and extent of the injuries.

Q. Dr. Meltzer only examined me, isn't that correct?

A. *According to the information—the letter that you showed me, his opinion was that you needed no treatment and therefore he rendered none.*

Q. Would this be as an examining doctor?

A. As a treating doctor.

Q. If I understand you corretely, you said Dr. Meltzer and Dr. Shafer were treating doctors?

Mr. Cohn: I object to this continuous line of argument.

Mr. Crane: I'm just straightening it out.

Mr. Crane: Q. Which one is the treating doctor and which one was the examining doctor?

Mr. Cohn: I'll object to this, your Honor, this entire line of questioning.

The Arbitrator: All right. This has been covered, Mr. Crane. The witness has answered it several times.

Petitioner offered into evidence "Authorization for Release of Information" form sent by the University of Chicago Clinic & Hospitals, for Consolidated Mutual Insurance Company, which petitioner never signed. Pet.'s Exh. 24-A & 24-B. TR 215, 216, appears as EXH. 22, in App. pgs. 137A-138A.

Cohn testified on direct examination that he did not get petitioner's medical records from Billings Hospital; that he did not subpoena the records from Billings and that he was positive no one in his law firm did; that if the insurance company did, they listed his name as respondent's lawyer. (TR 99, 100)

Phillips testified (TR 1085) that he did not make out the subpoena to have petitioner's medicals subpoenaed; that he assumed Cohn & Cohn subpoenaed the records.

Petitioner further questioned Phillips (TR 1172):

"Q. Yesterday you stated that you don't know who made out this—the subpoena for the records at Billings Hospital?

Mr. Cohn: Objection. That's what he said. He testified that he did not make it out. He didn't know who made it out?

Mr. Crane: Q. Do you know who made it out?
A. Yes, I do.
Q. Who did?
A. Probably Record Copy Services."

Petitioner's Industrial Commission Exhibit #23, dated February 18, 1965—2-23, shows the name of petitioner and underneath petitioner's signature, the name of Angelo Targia and underneath his signature, the date "9-24-64" (the date of petitioner's accident and injury). Phillips testified that Angelo Targia was an investigator who witnessed petitioner's signature. This exhibit was an authorization that petitioner made out for Stevenson only and Angelo Targia was not present at the time (TR 1086, 1088, 1089). The dates of petitioner's admissions to Billings were 12/27/64 and 1/20/65 which was approximately 95 days after 9-24-64, the date of petitioner's accident and injury.

Stevenson was hired during the month of December 1964 and the authorization was made out after petitioner retained him as counsel.

This exhibit was torn or cut in half and the Arbitrator stated (TR 1162) he was aware there were two documents and asked Phillips if they were ever in his possession. Phillips testified that he had never seen them before today (TR 1163), yet he testified on TR 1086 that Angelo Targia was a witness to petitioner's signature on the authorization on the date of injury.

Billings refused to allow records out on the authorization, noting thereon "did not take—Auth too old." Appears as EXH. #23, App. pg. 139A.

On TR 1161 petitioner asked the following question:

> "Q. Well, can you straighten me out in my mind then why I get a bill for $31.90 from Dougals Stevenson for these records when they were only taken out of Billings Hospital once?
>
> Mr. Cohn: I object. This witness would have no knowledge of that fact.
>
> The Arbitrator: I don't think this witness is qualified to report on Billings practices or Record Copy Services.
>
> Mr. Cohn: Or Mr. Stevenson's.
>
> The Arbitrator: Or Mr. Stevenson's for that matter. I think that's beyond this witness's knowledge." (Pet.'s Ind. Com. Exh. #26).

The Record Copy Service Authorization, refused by Billings Hospital, was dated February 18, 1965. EXH. #23, appears in App. pg. 139A.

The Record Copy Service bill to Stevenson for $31.90 was also dated February 18, 1965. Appears as EXH. #24 in App. Pg. 140A.

The Authorization for Release of Information was sent by Billings Hospital to petitioner on February 19, 1965. EXH. #22 appears in App. pgs. 137A-138A.

Stevenson filed Notice of Adjustment of Claim with the Illinois Industrial Commission on February 19, 1965. EXH. 59 appears in App. pg. 324A.

During cross examination of the witnesses, Cohn as well as the Arbitrator interjected answers to questions put to witnesses.

> "Mr. Crane: Well, Mr. Stevenson was acting as my attorney. Now I want to know if he was representing Consolidated Mutual in the years that he handled my case. I want to know if he had received any compensation whatsoever from the insurance company.

Mr. Cohn: I have no way of knowing. To answer that, I believe—

The Arbitrator: It is unfair to ask Mr. Cohn that. I don't think he would be in a position to know." (TR 90, 91)

• • •

"Mr. Crane: Some are signed by Dr. Rabin. Others are signed by Dr. Scuderi, which is part of Dr. Scuderi's record.

Mr. Cohn: He already testified. He had an opportunity to cross examine. And, as far as Dr. Rabin, I think you filled out only one form, is that right?

The Witness: One." (TR 1039)

• • •

"Mr. Crane: Q. When there is a question of legal involvement you say you just state to a patient, you can get medical treatment and you won't put it in writing?

Mr. Cohn: Objection.

The Arbitrator: Sustained. He said that sometimes it's done by phone and verbally and sometimes it's done by letter." (TR 1199)

• • •

"Mr. Cohn: Objection. There's no way for him to know this.

Mr. Crane: He was there. He was there." (TR 1095)

• • •

"Mr. Cohn: There's no indication that the entire document ever got into his possession. There's no testimony that the document was ever in his possession.

Mr. Crane: Would you leave the man answer the question?" (TR 1162)

• • •

"Mr. Crane: Did you suggest to me that I see somebody at the union that takes care of workmen's compensation claims?

A. I did not.

Q. Are you absolutely certain of that?

A. Yes sir.

Q. Is there or was there anybody at the District Council of Carpenters that handled Workmen's Compensation Claims for the members?

Mr. Cohn: Objection. There's no way that this witness is qualified to know this." (TR 1169)

* * *

"Mr. Cohn: Objection. He has no way of knowing what is customary." (TR 1175)

* * *

"Mr. Crane: Q. They had the authorization (power of attorney) from Cohn and Cohn to sign their name. It's a legal document.

A. The name is not signed. It's typed.

Q. Typed? Do they have the authorization?

Mr. Cohn: Objection.

The Arbitrator: Sustained. This witness wouldn't know whether they had the authorization between two other parties. (TR 1172, 1173)

* * *

"Mr. Crane: Q. Are the clinical records the property of the insurance company?

Mr. Cohn: Objection.

The Arbitrator: Sustained. It calls for a legal conclusion.

Mr. Crane: Q. Are x-rays the property of the physician or the insurance company?

Mr. Cohn: Objection.

The Arbitrator: Sustained. This witness is not qualified to answer a question like that." (TR 1166)

Dr. Scuderi was a witness for the respondent and on direct examination testified as to the dates he saw petitioner as a patient and to his objective findings on those dates. Dr. Scuderi treated petitioner from approximately February 24, 1965 to approximately May 4, 1966, which is a period of approximately 435 days.

February 24, 1965, approximately 154 days after the accident and injury on September 24, 1964, his primary objective findings were:

1. There was some flattening of the normal lordotic curve.
2. He had slight atrophy of the sacro-spinalis muscles bilaterally. (TR 863)
3. I think that shows a definite shrinkage of the left leg of the right leg compared with the left. (TR 864)
4. The diagnosis is low back strain with some persistent evidence of sciatic radiation but I do not feel that he has a herniated disc. (TR 866)

March 17, 1965, approximately 174 days after the accident:

1. He had some discomfort and there was a limitation of motion of the spine on hyperextension. (TR 868)
2. At the time the circumference of both legs still showed some slight atrophy, moderate atrophy of the right leg. (TR 869)

March 24, 1965, approximately 181 days after the accident:

1. There was slight atrophy of the right upper extremity, the right arm was 12, the left arm was 12-3/16th; the right forearm was 11 and the left forearm was 11-11/16th. (TR 870)

May 21, 1965, approximately 239 days after the accident:

1. At this time it was very tender on pressure to the lumbosacral area. He had marked limitatons of all back motions. (TR 871)
2. Numbness of right foot, of one foot to the other. (TR 872)

3. He had some discomfort on straight leg raising on the right side. (TR 872)

May 28, 1965, approximately 246 days after the accident:

1. He had a moderate loss of foreward flexion and hyperextension of the spine. (TR 872)
2. He had some tenderness in both Gluteal areas. (TR 872)

June 14, 1965, approximately 263 days after the accident:

1. He had some flattening of the normal lumbar curve. There was no atrophy. (TR 874)
2. He had a loss of about 20 degrees of hyperextension. Ordinarily in a man of this physical makeup, they are able to hyperextend to 25 degrees, so, I'd say he lost 80% of hyperextension. (TR 875)
3. He had some pain on the anterior torsion test on the right side but the low back tests were negative. Now the significance of this is that there was apparently some irritation of the right sacro iliac joint. (TR 875)

June 30, 1965, approximately 279 days after the accident:

1. The hyperextension was completely absent. At one time before I said he lost 20 degrees out of 25, so this time he lost 25 out of 25.
2. There was an almost approximation in the circumference on the thigh, a difference of ⅛ of an inch but on the calves he had a ½ inch difference on the right side, it being smaller. (TR 878)

September 10, 1965, approximately 351 days after the accident:

1. He had some discomfort in both gluteal areas. Foreward flexion was good. He had a complete loss of

hyperextension. (TR 878) At this time he had a slight decrease of sensation on the inner aspects of the left calf.

2. Now the circumferences here were a little better as far as comparisons were concerned. The right thigh was 20-13/16 and the left thigh was 21. The right calf was 13-3/16 and the left calf was 13½. Now, he had some discomfort on straight leg raising bilaterally. (TR 879)

October 27, 1965, approximately 398 days after the accident:

1. He complained of pain in both heels and insteps. The longitudinal arches were normal and there were no objective findings in the feet. (TR 879, 880)

February 9, 1966, approximately 403 days after the accident:

1. He had some flattening of the normal lumbar curve.
2. He had some slight atrophy of the sacrolumbalis and gluteal structures.
3. He had some loss of hyperextension.
4. The circumferences of both legs were almost even now. The right thigh was 20⅜ and the left was 20½. The right calf was 13-3/16 and the left calf was 13⅝. That represents still a slight amount of atrophy of the right calf. (TR 880, 881)

May 4, 1966, approximately 487 days after the accident·

1. He informed me on that date that while bending over he began to having sharp pains in the lower back. He stated that he was cleaning off his shoes at the time it occurred.
2. He had a definite flattening of the normal lumbar curve.
3. There was some atrophy of the sacrospinalis muscles.

4. He still had discomfort in the lumbosacral area.

5. At this time his forward flexion was normal—it was 135. As I testified a short time before, in examination the forward flexion was normal. So, I'd say he was considerably worse this time than he was before.

6. He had a complete absence of hyperextension of the spine. He had a restriction of lateral flexion and lateral rotation to both sides. At this time he had a very slight limp on the right side. The reflexes, toe extensors and sensations were normal. The circumferences of the both legs showed just a little bit smaller circumference on the right than on the left. This has been a constant finding throughout. In the low back tests he had some discomfort on straight leg raising on the right. He had considerable discomfort leg raising on the right. He had considerable discomfort on the lumbosacral test. This was when we acutely flexed the leg on the abdomen. I recommended local heat, rest and gave him some medication. (TR 881, 882)

   A. I had very positive findings this time.

   Q. Were these like any findings that he had at any time over the treatment?

   A. Yes, I'd say they were but it varied a little bit in degree. I think that this particular day that he had actually changed himself and was in more difficulty than I had seen him then. (TR 883)

On May 17, 1966 Dr. Scuderi signed the Attending Physician's Statement of Continued Disability for Bankers Life Nebraska and under "Progress" marked: "Unimproved", and the question: "Is Insured still totally disabled and unable to do any work?", he answered: "Yes." Appears as EXH. #25 in App. pg. 143A. This was signed approximately 500 days after the accident and injury on September 24, 1964.

On November 2, 1965 Dr. Scuderi wrote to Stevenson, petitioner's counsel at that time, saying in part:

> "Mr. Crane is afraid that maybe he will have future trouble with his back, but I do not feel he will have any operative difficulties and in fairness to everyone concerned on the settlement basis if he could be given a stipulated fixed amount for future medical care, this would be settled between you and the insurance company at some equitable figure, I think this might be satisfactory to everyone concerned. The exact amount of course, I am in no position to state because I have no way of knowing how much future care he is going to need." Entered into evidence as Exh. 19b. Appears as EXH. #9 App. pg. 122A.

Mrs. Crane testified on direct examination that Dr. Rabin and Dr. Scuderi both signed reports for Bankers Life Nebraska, petitioner's life insurance company. (TR 634)

On October 31, 1968, Mrs. Crane testified:

> "The Witness: Bankers, he has a life insurance policy with Bankers Life of Nebraska, and he had waiver in case he got hurt, the premium was waived. These were filled out by doctors, and he has not paid a premium to them since that time.
>
> Mr. Crane: Q. This started what year?
>
> A. 1964." (TR 635)

Petitioner offered into evidence Bankers Life's Attending Physician's Statement of Continued Disability signed by Dr. Scuderi in May, 1966, wherein Dr. Scuderi wrote that petitioner "Still can't work." Cohn objected and the Arbitrator sustained. (TR 637, 638)

Petitioner stated:

> "* * * Let the record show that I made the offer and there was an objection to it, and I do not understand the Arbitrator's ruling." (TR 639)

On January 19, 1970, Cohn objected to petitioner's motion that all the records of Bankers Life Insurance Company of Nebraska be admitted into evidence. They are signed statements, sent through the mail certifying that petitioner was ill and unable to work from 1964 up to the present time. (TR 1038, 1039) The Arbitrator never ruled on the objection and the records were never received into evidence. This was one of the few times, during the course of the proceedings, that the Arbitrator refused identification of subject documents so that the record would be absolutely clear that these reports were offered into evidence.

Petitioner submits the following, Bankers Life Nebraska Waiver of Premium Disability Benefits on two policies evidencing petitioner's total disability claim, copies of which appear as EXH #25, App. pgs. 141A-160A.

A—Letter and Voucher dated September 15, 1965. Bankers Life returning premiums already paid on both policies, after petitioner's accident and injury.

B—Notification of premium waived dated December 29, 1965.

C—Attending Physician's Statement of Continued Disability filled out and signed by Dr. Carlo Scuderi on May 17, 1966 and sent to Bankers Life Nebraska per their request.

D—Notification of premium waived dated June 7, 1966.

E—Notification of premium waived dated January 11, 1967.

F—Notification of premium waived dated May 29, 1967.

G—Notification of premium waived dated January 25, 1968.

H—Notification of premium waived dated May 17, 1968.

I—Attending Physician's Statement of Continued Disability filled out and signed by Dr. John J. Fahey January 23, 1969 and sent to Bankers Life Nebraska per their request.

J—Notification of premium waived dated February 11, 1968.

K—Notification of premium waived dated May 27, 1969.

L—Notification of premium waived dated December 24, 1969.

M—Notification of premium waived dated May 21, 1970.

N—Attending Physician's Statement of Continued Disability filled out and signed by Dr. S. J. Tansey January 16, 1971 and sent to Bankers Life Nebraska per their request.

O—Notification of premium waived dated January 25, 1971.

P—Notification of premium waived dated May 21, 1971.

Q—Notification of premium waived dated December 30, 1971.

R—Notification of premium waived dated May 16, 1972.

S—Attending Physician's Statement of Continued Disability filled out and signed by Dr. D. S. Forkosh January 10, 1973 and sent to Bankers Life Nebraska per their request.

T—Notification of premium waived dated January 17, 1973.

Another instance where the arbitrator refused identification of the documents so that the record would be absolutely clear were letters written to the Mayo Clinic and the answers from the Mayo Clinic doctors (TR 1145, 1146). The Arbitrator stated:

> "This is in evidence as to your treatment and all that is in evidence *and I won't allow the record to be cluttered any more than it is.* * * *"

Petitioner's Exhibit #15, a medical report dated May 14, 1965, from Dr. William Meltzer, an examining physician for the carrier, was offered into evidence as an admission against interest and was objected to by Cohn and sustained by the Arbitrator but was filed in petitioner's brief on June 1, 1971 with the Illinois Industrial Commission and appears as EXH. #26, App. pg. 161A-162A.

Dr. Meltzer was never called by the respondent to testify and Dr. Shafer never testified for respondent.

Cohn was recalled to testify and he demanded a subpoena and a witness fee. Petitioner refused to pay him any fee and the Arbitrator stated that Cohn didn't have to testify unless he received a subpoena fee. (TR 408, 409)

> "Mr. Crane: The law says that?
> The Arbitrator: Correct. * * *"

Petitioner then served Cohn with a subpoena and paid the fee.

Petitioner secured the services of an out of state attorney, Mr. Stein, to represent him before the Illinois Industrial Commission on the medical portion of the testimony in the case.

On or about April 17, 1969 petitioner and Stein met with Cohn. Cohn wanted to discuss the case with Stein without petitioner being present. After their conference,

Stein informed petitioner of the matters discussed by him and Cohn. Three (3) of the issues they discussed, and which were included in an Affidavit containing all the issues that was filed in U. S. District Court in the case of Arnold L. Crane v State of Illinois Industrial Commission, et al, docketed # 71 C 2014, were:

"3. That Louis J. Cohn, attroney for Consolidated Mutual Insurance Company stated that if a settlement was to be consummated, that he, Louis J. Cohn, would insist upon plaintiff signing a complete release against him for any liability that plaintiff claimed he was responsible for.

4. That plaintiff had threatened him with bodily harm and he was fearful of him.

5. That Louis J. Cohn, attorney for Consolidated Mutual Insurance Company stated that plaintiff had threatened to sue him, and others, for a conspiracy and other causes of action. This is the reason he wanted a release." EXH. #27 appears in App. pgs. 163A-166A.

The Arbitrator set aside two days, December 2, 1969 and December 3, 1969 to conclude the Hearing. During a meeting of the attorneys at the Illinois Industrial Commission, Cohn persuaded Stein to submit an offer of $15,000 to petitioner. This offer included petitioner's medical expenses to settle the case. Petitioner vehemently rejected the offer stating that absolutely under no circumstances would he settle for the above terms. After petitioner's rejection, Stein received an additional $1,000.00 offer.

Negotiations continued on future medical that petitioner needed as a result of his accident and injury with petitioner, Stein, Dr. Tansey (petitioner's treating doctor who

was a witness), Cohn and the Arbitrator present at various times. Cohn stated that Blue Cross and Blue Shield would pay for all future medical costs after the settlement of petitioner's case. During these negotiations the Arbitrator kept inquiring of Stein and Cohn if there was any hopes of any settlement.

An Affidavit was filed in U. S. District Court, Arnold L. Crane v. State of Illinois Industrial Commission, et al. #71C2014, regarding the above negotiations that took place December 2, 1969 and appears as EXH. #28 in App. pgs. 167A-170A.

Petitioner was covered by Blue Cross/Blue Shield, Workmen's Compensation and a union health and welfare plan but due to the refusal of the carrier to provide medical care, petitioner was forced to pay for his own medical expenses as a result of the accident and injury.

The Arbitrator had written all parties concerned that December 2nd and 3rd, 1969 had been set for two days of medical testimony only which was to be the final hearing (TR 753, 760).

On November 28, 1969 petitioner sent Cohn by certified mail, a medical report by Dr. Tansey who was testifying as petitioner's witness. Cohn did not receive the report until 2:00 P.M. December 1, 1969 (TR 755) and stated he wasn't aware a report was coming because it was late so didn't have his witness available. (TR 755, 756)

Cohn raised an objection under the "48 hour rule" to Tansey's testifying on December 2nd thus forcing petitioner to pay for Tansey's services on December 3rd, also, in order for him to testify. The "48 hour rule" under the Workmen's Compensation Act, requires that a copy of the

testifying physician's medical report be furnished the employer or his representative not later than 48 hours before the time of said hearing. (TR 758)

The Arbitrator agreed with Cohn as to the "48 hour rule" but then stated on TR 761:

> "Well, gentlemen, as I say, this letter was addressed to you all with the specific purpose of bringing this case to a close, the case would be closed. If you can work out some sort of an agreement between yourselves fine, but as of tomorrow evening this case will be closed in this office. I so advise the parties. You gentlemen work it out. *If you can't, the case will be closed today and tomorrow. That is for both sides.*"

After Dr. Tansey testified for petitioner and his case was rested, the carrier called Dr. Scuderi—portions of his testimony supra pgs. 32-36.

The Arbitrator further stated: "I do not know, Mr. Cohn, that you had any part of the case ready for presentation at that time. I mean * * * if it were a case of your witnesses being ready to proceed I could be a little bit more sympathetic as to your point of view." * * * In other words, when you say you're ready for trial your witnesses are here present and prepared to go. Now they may not be able to go because the other side hasn't completed its proofs yet. That time has expired but they are ready. They're more or less tensing at the bit."

> "Mr. Cohn: What you're saying then is that they should be made to stay here and my client paying them to such a time as when he finishes his case. Is that what you're suggestng to me that I should have my client paying them per diem to stand in the hall until such time as Mr. Stein finishes his case? I'm sorry, your Honor. *I don't feel that's fair to the respondent to put that burden on them.*" (TR 915, 916)

After further discussion on the matter of Cohn's continuance, Stein objected to further delay and stated:

> "Mr. Stein: * * * At this time I'm going to object to his request for a motion for continuance in this case. This case has been in process for two years or more. This counsel admits, the same as we did before, not having his witnesses ready. I went to the expense of coming down here. I had the doctor available. Because of a technicality in the law he objected. As far as I'm concerned I have never yet in all my life came into a court of law with case that I have had two years to prepare and then come in here at the last minute and say, 'Here, I want additional time.' Why didn't he have his doctors here? Why didn't he have his witnesses here? Why? Because he wasn't prepared. He didn't anticipate that the Arbitrator would set this case on trial. I took it for its face value. I made a trip of six hundred miles, spending two days to try this case. My doctor was ready to testify. He objected and then he comes in after such an objection, properly made, perhaps, but improper as far as I'm concerned, and delays me in this court room when he knows the Arbitrator has set a final hearing, well knowing that in all these two years that this action has been pending do you mean to tell me that in these two years you can't have prepared your case. I have never in my life ever run into anything like this. I hope I never do it again. I was fully warned. I know this case was coming on for trial. We attempted to settle this case and—" (TR. 920, 921)

The Arbitrator granted Cohn the relief sought for two additional days after petitioner's case had been rested. Petitioner refused, once again, to go to the expense of bringing in counsel from out of state for two additional days. Thus, forcing petitioner to try the balance of the case pro se.

The case resumed on January 19, 1970 and after considerable dialogue regarding Cohn's continuance, petitioner stated:

"Mr. Crane: Mr. Cohn made the statement at the end of hearing on December 3rd that his constitutional rights and federal rights were being violated by this court. He also made the statement to my attorney that this was nothing—and I quote—'This was nothing but a kangaroo court.' Am I correct in that statement, sir?

Mr. Cohn: No. That's an outright lie.

* * *

Mr. Crane: *Mr. Cohn talked about his constitutional rights. What were my constitutional rights in this case? Did I have the right to go to the National Labor Relations Board? Are those my constitutional rights? The Supreme Court says they are my constitutional rights. They say it.*" (TR 933, 934).

Mr. Cohn: Your Honor, may we proceed with the hearing?

The Arbitrator: Mr. Crane, I'm going to suggest one thing to you and that is to conclude your statement or I'm going to the Chairman's office and say that this case is not done because you persist in carrying on like this. Are you going to continue with your statement?

Mr. Crane: Will you allow me to make my statement? You allowed Mr. Cohn to make his statement. You gave him ample opportunity to come in and present his witnesses.

The Arbitrator: Will you conclude your statement, please?

Mr. Crane: Yes. The Supreme Court says—

The Arbitrator: I'm going to the Chairman's office if you persist with this.

Mr. Crane: The Supreme Court of the United States has said in an unanimous opinion argued November 9, 1967 and decided December 5, 1967 of what my rights are, my constitutional rights. Now, who

should tell me what my rights are? My lawyer or my union? Who has the obligation to tell me what my rights are? I don't think I'm getting a fair trial here. You asked me once, a long time ago, if I was getting a fair trial. At that time I said yes; and, at this point, after Mr. Cohn made his statement and you said in your letter that the proofs had to be closed on December 3, 1969—

The Arbitrator: Excuse me. All right. Go ahead.

Mr. Crane: I don't think I'm getting a fair trial. I think there's some politics being entered into this and I resent it until I can be shown that there has been no favoritism shown in this case." (TR 934, 935)

• • •

"Mr. Crane: The case has been closed. Will you explain—if you're good enough to explain it to me—will you explain this letter to me and why you reversed yourself and gave him more time when we had the opportunity of only putting on one doctor? Will you tell me why you gave him two extra days to present his case? Isn't that just a little bit unusual?" (TR 936)

• • •

"Mr. Crane: I'd like to ask the Arbitrator to explain his decision in allowing this trial to keep going. If the Arbitrator does not want to stop this trial I'd like to have the opportunity of going to a higher court and stopping it. I am not going to allow this court to be used for harassing me any more. I think that I can prove beyond any doubt that it is nothing more than harassment and I think I can prove beyond any doubt that you are making nothing but a farce out of this." (TR 937)

• • •

"Mr. Crane: I object to the entire proceedings from this point on.

The Arbitrator: All right. You can make that a standing objection, Mr. Crane.

Mr. Crane: I object to Dr. Moore testifying.

The Arbitrator: All right. You have made an objection to the introduction of these records. They will be received into evidence over your objection." (TR 938)

* * *

Petitioner has quoted the above from the transcript for the Court's convenience so that there will be no misunderstanding as to what transpired.

Cohn called the Arbitrator's attention to petitioner's obligation of being examined under the Workmen's Compensation Act (TR 8-10). The obligation of the carrier is to pay, to all injured workers, the employee's expenses of going for a physicial examination at the carrier's request as set forth in the Workmen's Compensation Act, Section 12, pg. 40, which states in part:

"An employer requesting such an examination, of an employee residing within the State of Illinois, shall pay in advance of the time fixed for the examination sufficient money to defray the necessary expense of travel by the most convenient means to and from the place of examination, and the cost of meals necessary during the trip and, if the examination or travel to and from the place of examination causes any loss of working time on the part of the employee, the employer shall, reimburse him for such loss of wages upon the basis of his avearge daily wage. Such examination shall be made in the presence of a duly qualified medical practitioner or surgeon provided and paid for by the employee, if such employee so desires."

Cohn testified on direct examination (TR 113, li 7-23):

"Q. What in the Illinois Workmen's Compensation Act am I entitled to if I go for an examination, a physical examination?

A. You are entitled to have another physician of your own choosing present at the examination.

Q. That is all?

A. If you want. Yes.

Q. That is all I am entitled?

A. I guess you are entitled to be paid lost time or carfare, if you request it.

Q. If I request it?

A. If you wish it, yes.

Q. You want to show me where it says that?

A. I don't think it says that in there.

Q. Well, you made a statement if I requested it. What do you mean if I requested it?

A. That is my interpretation of the section."

The Arbitrator said on TR 330:

"Let me say this. If there has been some violation of the Workmen's Compensation Act, Industrial Commission, as such, that is properly before the Commission itself. In other words, if there is some complaint against some misuse of the Commission itself, Commission's facilities, if that's the case, the proper place to hear that is the Commission itself, the Chairman of the Commission, because I have no authority in that regard. I mean, in other words, I'm not a safekeeper of the Industrial Commission. The Chairman—"

No one at the Illinois Industrial Commission has the authority, or will admit to having any authority, to see that the Act is carried out to the letter of the law.

Cohn testified that he had no knowledge of whether or not the carrier paid petitioner for going for a physical examination at their request to their doctor, and in answer to the question: "You are not interested in that?, Cohn replied: "I can't answer that, Your Honor, and I object to that." The Arbitrator sustained the objection. (TR 419, li 1-8)

On TR 1183, 1184 Phillips testified on cross examination:

"Mr. Crane: Q. Are you familiar with the Illinois Workmen's Compensation Act?

A. Yes, sir.

Q. Have you read it recently?
A. No, I haven't.
Q. Are you familiar with Section 12?
A. Yes, I am.
Q. Section 12, do you comply with that?
A. Yes, I do.
Q. En toto?
A. Yes, I do.
Q. You are absolutely certain?
A. To the best of my knowledge I do.
Q. Do you pay in advance to the employee to take the physical examination?
A. At times we do.
Q. When do you do it?
A. When there is a long distance to travel.
Q. Is that what it states in the book?
A. I don't have the book in front of me. I don't know the exact wordage. Do you want me to read what it states?
Q. I want you to tell me what it states.
A. It states that the expenses should be paid in advance.
Q. *So you don't comply with that law—that section of the law?*
A. *As to the exact wordage, I would say, no.*
Mr. Crane: Q. Did you pay me?
A. Not to my knowledge, no.

The carrier requested petitioner to go to their doctors for physical examinations on the following dates:

On October 26, 1964 Howard Phillips, Compensation Manager for the carrier sent petitioner to Dr. Sid John Shafer for a physical examination. (TR 110)

On May 14, 1965 Stevenson requested petitioner to go to Dr. Sid John Shafter for a second physical examination at the request of the insurance carrier. (TR 110)

On August 18, 1967 Stevenson requested that petitioner go to Dr. Leonard Smith on September 11, 1967 for a physical examination at the request of the insurance carrier. (EXH. #10, TR 342) App. pg. 123A

On January 17, 1968 Jack Sachs requested petitioner to go to Dr. Sid John Shafter for a physical examination that he had set up for petitioner on January 26, 1968.

Petitoner brought the violations of the Illinois Workmen's Compensation Act to the attention of three different Chairmen of the Illinois Industrial Commission—Chairmen Phillip Carey, Edward Vorbeck and Alexander White. Petitioner brought it to White's attention when he was an Assistant to Governor Ogilvie, prior to his being Chairman of the Commission. EXH. #29—Motion to Exclude White, App. pgs. 171A-175A. EXH. #30—Transcript of Hearing on Motion to Exclude White, App. pgs. 176A-178A. EXH. #63—U.S. Dist. Ct. Compl. pgs. 5, 6, 7 & 8. App. pgs. 334A-337A.

Petitioner also brought this violation to the attention of the State of Illinois Insurance Department. EXH. #31, App. pg. 179A. (Gibson's letter dated 5-18-70 which was an attachment (j) in a Request for Admissions filed in U.S. District Court 12-1-71, Arnold L. Crane v. State of Illinois Industrial Commission, et al, docketed case #71 C 2014).

Some insurance carriers adhere to Section 12 of the Workmen's Compensation Act as evidenced by Case #73 WC17290, *Lewis J. Henderson* v. *North Shore & Central Illinois Freight Company*, EXH. #32, App. pgs. 180A-183A.

In the instant case, the carrier violated the Act and it was not enforced by:

1. Petitioner's attorneys, Stevenson or Sachs
2. The Arbitrator at the Illinois Industrial Commission
3. The Commissioners at the Illinois Industrial Commission

4. The Chairmen at the Illinois Industrial Commission
5. The Circuit Court of Cook County, Illinois
6. The Illinois Supreme Court
7. U. S. District Court, 7th Circuit
8. Court of Appeals
9. Attorney General for the State of Illinois.

In *Arnold L. Crane* v. *State of Illinois Industrial Commission, et al,* Case #72-1480, in an unreported decision the United States Court of Appeals on 12-1-72 said in part:

> "Although the complaint suggests for the most part that such review is its purpose there are claims, if construed in favor of plaintiff, that the commission does not administer its duties with an even hand, and discriminated against Mr. Crane." * * * "Judicial review of the proceeding efore the Industrial Commission is, of course, for the Illinois courts. . . ." EXH. #33 & EXH. #34, App. pgs. 184A-190A.

On June 3, 1968 Cohn advised the Arbitrator that he didn't like to go into a piecemeal trial; that if the case is tried either pro se or by an attorney, he wanted it tried at one time. (TR 58) However, on August 6, 1968 the Arbitrator asked Cohn if he could revise his schedule so that some continuity could be had in the case and Cohn stated:

> *"It is not a question of imposition, it is just a question of running a business."* (TR 166)

On August 9, 1968, Cohn stated in front of petitioner, the Arbitrator and Chairman Carey of the Industrial Commission:

> "However, I wish to make this position clear * * * although I desire to bring this case to a conclusion, I do not wish to take this case above any other case, and

I don't wish to be placed in a position of altering or amending my schedules, which are, as you know, by practice 90 days in advance.
I would be happy to continue on with this case in a normal course of events and under the normal considerations that are granted when I am available, and when I have a day available and when the Arbitrator has a day available, but to merely go from day to day, cancelling out cases previously set, I can't go with it any further. I have done it all this week. I have other clients to whom I have other responsibilities." Both the Chairman and Arbitrator agreed that it was not unfair to continue with a piece-meal trial. (TR 295-296).

On page 4, li 4, of the Illinois Supreme Court Opinion, the Court said:

"Insofar as the piecemeal nature of the hearing was concerned, it is true that there were some 15 separate hearings between June 3, 1968 and January 20, 1970, when the matter was finally concluded. However, the length of the proceedings was due in large part to the claimant's presentation of multitudinous exhibits." App. "A" App. pgs. App. 1-App. 9.

On October 7, 1968 petitioner reminded the Arbitrator that when the hearing started it was going to be tried entoto and wasn't going to be this hodgepodge—this was agreed by all parties. The dates of the hearings of record were: (TR 505-506)

October 24, 1967 (TR 2)
April 29, 1968 (TR 12)
June 3, 1968 (TR 29)
August 6, 1968 (TR 70)
August 7, 1968 (TR 169)
August 8, 1968 (TR 264)
August 9, 1968 (TR 288)
September 9, 1968 (TR 297)
October 7, 1968 (TR 361)
October 31, 1968 (TR 509)
November 12, 1968 (TR 697)
March 12, 1969 (TR 729)
July 9, 1969 (TR 746)
December 2, 1969 (TR 753)
December 3, 1969 (TR 805)
January 19, 1970 (TR 926)
January 20, 1970 (TR 1102)

It was necessary to submit all the exhibits as the respondent refused to stipulate as to the accident and injury and because of Cohn's alleged statement to Sachs of the alleged medical offer, even though Cohn testified:

> "Notified that an Application for Adjustment of Claim had been filed, indicating there had been an accidental injury, and that notice was filed within the time required by law." (TR 75, supra pg. 16)

"Ads" of the carrier were offered into evidence by petitioner, were identified and objected to by respondent and sustained by the Arbitrator, whereupon petitioner asked the Arbitrator?

> *"Don't you want to let any of their advertising in, how they play this game, Mr. Callahan?"* (TR 404, 405).

The advertising of the carrier further clearly substantiates why it was necessary to submit the exhibits and prove each essential element in the entire case. The carrier advertised in the National Underwriter March 31, 1967:

> "Consolidated is everything you'd expect a great insurance company to be. BUT NOT INFLEXIBLE. We know when to move fast to protect a client's image. By soothing cantankerous claimants with *imagination and ingenuity,* we save more than reputations. *We save our clients money.* Isn't Consolidated the casualty company for you?" EXH. #34, App. pg. 191A-194A.

In the National Underwriter March 24, 1967, they advertised:

> "Consolidated is doing everything you'd expect a great insurance company to do. BUT NOT HEMMING AND HAWING. We give our clients more than

straight answers. *We give them the lower premiums that result from efficient claims handling and investigators who know how to ask the right questions.* Isn't Consolidated the casualty company for you?" EXH. #34, App. pg. 191A-194A.

In the Property Insurance magazine February 18, 1967, they advertised:

"Consolidated has everything you'd expect a great insurance company to have. BUT NOT WEAK KNEES. *We stand firmly for two things: Lower loss ratios for ourselves. And lower premiums for our assureds.* Isn't Consolidated the casualty company for you?" EXH. #34, App. pg. 191A-194A.

In Property Insurance December 17, 1966, they advertised:

"Consolidated has everything you'd expect a great insurance company to have. *BUT NOT GULLIBILITY. When it comes to claims, we're not a soft touch.* So our lower costs keep our loss ratios low and our assureds' premiums even lower. Isn't Consolidated the casualty company for you?" EXH. #34, App. pg. 191A-194A.

Petitioner received a notice of motion from Cohn stating he would appear before Commissioner Moulin on November 2, 1970 at the Industrial Commission. Moulin was out of town on that date and Cohn didn't want to appear before any other Commissioner. On November 16, 1970 the motion was heard by Moulin. Moulin's original assignment to the case or Cohn's preference for Moulin was never explained.

In the hearing before Commissioner Moulin on January 18, 1971 he insisted that briefs be submitted in the case by respondent and petitioner, a pro se:

"The Commissioner: I would like to have briefs in this case. How much time do you want? Do you want to submit a brief?

Mr. Cohn: To submit a brief?

The Commissioner: Thirty days?

Mr. Cohn: Thirty days, I imagine.

The Commissioner: Do you want 30 days to answer?

The Petitioner: Yes.

The Commissioner: Now, when you submit briefs, brief the law, brief the evidence submitted, and all the matters. When the briefs come in, I will set it for oral argument." EXH. #35, pg. 28 of TR. of hearing, App. pgs. 195A-196A.

With no extension of time requested respondent filed his Brief on March 15, 1971 (56 instead of 30 days after the January 18, 1971 hearing).

Petitioner filed his brief on June 1, 1971 as the Commissioner had directed. The brief consisted of 204 pages and eventually had to be replaced two more times (filed three times with the courts). Listed below is the "Index" of the volume which had to be replaced:

Advertising by Consolidated Mutual Insurance Company
Disputed Accident Testimony
Medical Records Testimony
Medicine Given by Dr. Rabin
Questioning of Dr. Rabin
Questioning of Mr. Phillips
Discharge by Dr. Rabin
Questioning Mr. Cohn as to Discharge Date
Testimony of Mr. Cohn on Discharge Dates
Privileged Information and Work Product
Information Records
Mr. Cohn Refusing to Testify
Mr. Cohn "Piece Meal" Trial

Attempt to Settle
Mr. Cohn's Testimony
Medical Information from Mr. Cohn to Mr. Stevenson
Section 12—Physical Examination
Mr. Cohn Testifying Under Oath—Not on Witness Stand
Discharged as Being Well
Mr. Cohn to Dr. Rabin—Medical Treatment
Mr. Crane to Mr. Phillips—Medical Treatment
Perjury
My Health and Injury Testimony
Temporary Payment Testimony
Fired for Union Reasons
Proper Counsel
Conflict of Interest—Douglas Stevenson, Attorney
Jack Sachs, Attorney—Testimony
Testimony of Charles Thompson, Secretary-Treasurer of District Council of Carpenters—and Insurance
Light Duty
Arbitrator Setting Time Limit
Testimony of Al Maske, Witness
Forty-Eight (48) Hour Rule
Arnold Crane Statement
Dr. Tansey's Letter
Testimony on X-rays and atrophy
Testimony of Dr. Scuderi
Testimony on Lumbar Lardosis
Testimony on Atrophy
Testimony on Hyperextension
Testimony on Narrowing of Disc
Testimony on Lipping of the Vertebrae
Discharge Diagnosis by Dr. Moore of Billings Hospital
Miscellaneous

On June 1, 1971 petitioner delivered a copy of his brief to Cohn & Cohn and their girl, Diana Berkowitz, refused to sign for it, saying she had instructions from the Cohns not to sign anything for petitioner. Aff. filed Ind.Com. 6-7-71, EXH. #36, App. pg. 197A-199A.

On TR 267 Cohn said to the Arbitrator:

> "You had been allowing into evidence such things as you said for whatever probative value they have. I will call to your attention that there is a possibility upon conclusion of this case an appeal will be filed by one party or the other, and to allow extraneous matters, to build up the cost of this record, to allow things like the Constitution and Laws of some Body in there, that is something that is going to cost somebody a great deal of money in the event an appeal has to be filed.
>
> I understand the thory of leniency under the rules of evidence, but it seems to be an unfair burden that is going to be placed on the party bearing the cost of the record."

In respondent's Petition For Leave To Use Original Evidentiary Documents and Transcript, filed March 9, 1970, he says:

> "Now comes Corbetta Construction Company by Cohn, Cohn and Lambert, their attorneys and states as follows:
>
> 1) That the respondent has filed a petition to review the decision of the Arbitrator.
>
> 2) That in the course of the prolonged arbitration hearing the petitioner offered, and the Arbitrator allowed into evidence, over two hundred and fifty exhibits; the vast majority of said exhibits were offered over the objection of the respondent.
>
> 3) That the cost of the record will be greatly increased if the respondent is forced to pay for the photostating of all these documents, many of which the respondent urges were improperly admitted into evidence.

4) That is is unfair to tax the respondent with the cost of the payment for such photostating in light of the attitude of the Arbitrator in allowing the petitioner to submit all these exhibits.

Wherefore the respondent prays for an order from this Commission directing the court reporters to use the original documents in the transcript to be filed with the Commission rather than photostat said documents and tax the respondent with such cost."

During the hearing on the above petition on April 20, 1970, Commissioner Moulin stated that the proper procedure is to xerox or substitute photostats for the originals, and that the originals were to remain with the Commission. Tr. of Proceedings pg. 4, 6.

"The Commissioner: I want the record also to show that these original documents are to remain with the Commission and that you will not be allowed to withdraw them." TR. of Proc. pgs. 5, 6. EXH. #37, App. pg. 200A-211A.

"Mr. Cohn: I'll have to pay for it myself if I do that. The Exhibits are in the file. They have already been introduced. I don't think I should have to pay for the photostats of, for instance, a Union Contract which is in there: just to name one thing." TR of Proc. pg. 7. EXH. #37 App. pg. 200A-211A.

Cohn was reluctant to spend $1,000 to xerox the exhibits and, over petitioner's objection and motion objecting thereto (filed 4-4-70), the Commissioner gave respondent leave, after much discussion, to submit the originals *without having to have an Order written* and thus make the exhibits a part of the original record and the Commissioner stated:

"THAT WILL NOT PREJUDICE MR. CRANE AND THAT CROSSES THAT BRIDGE." COMMISSIONER MOULIN MADE NO PROVISION FOR THE SAME RELIEF FOR PETITIONER! (TR of Proc. pg. 7) EXH #37 App. pg. 200A-211A.

Petitioner objected to Cohn asking for this relief as it was improper and the Commissioner warned petitioner that he would have to conduct himself properly, otherwise petitioner would have to get an attorney. (TR of Proc. pg. 6) EXH. #37 App. pg. 200A-211A.

The Commissioner said: *"I WANT TO BE FAIR TO EVERYBODY."* (TR of Proc. pg. 10), EXH. #37 App. pg. 200A-211A.

The Commissioner advised petitioner that if respondents did not put on any additional evidence, petitioner would not be allowed to submit any further evidence. (TR of Proc. pg. 11) EXH. #37 App. pg. 200A-211A.

Petitioner filed a Request for Oral Argument and Notice for Additional Evidence on March 17, 1970.

In the Decision on Review, dated June 28, 1971, the Illinois Industrial Commission ordered: (App. "D", pgs. App. 13-App. 15)

> ". . . the probable cost of the record to be filed on return to writ of certiorari is the sum of $1,375.00. . ."

The writ of certiorari was due approximately July 19, 1971 and due to Cohn's being granted leave to use the evidentiary documents, petitioner was trying to get an itemized list of the $1,375.00 cost of the record. Commissioners Whitaker and Getzendanner, as well as Jayne E. Price, Secretary of the Commission, refused to give it saying that it had to come from Commissioner Moulin and he was out of town on official business.

On July 19, 1971 petitioner discussed the transcript charges with Roselle Kern, Moulin's court treporter. She allegedly quoted the cost at 80¢ per page and alleged that she would sub it out and make some money. 80¢ is a "first transcription" charge; however, respondent had it transcribed when he brought it up for Hearing on Review.

During this discussion Getzendanner entered the room and told petitioner he had been there all week and if he didn't stop harassing Kern he would have him put under a peace bond. Kern allegedly advised petitioner that Moulin sets the cost of the transcript and refused, also. to give him an itemized list. However, Kern advised petitioner he could substitute the copies and his deposit money would be returned but she didn't know how or when. EXH. #38 App. pg. 212A.

On July 19, 1971, the last day for filing the writ of certiorari, Moulin still hadn't returned and petitioner was forced to file an emergency petition at the Industrial Commission, Petition for Leave to Use Original Documents and Transcript, wherein petitioner requested the same relief that had been granted the respondent at the hearing on April 20, 1970 (EXH. #37, pgs. 200A-211A supra; i.e. use the original transcript, original brief or abstracts, everything in the record. Petitioner listed two alternates, (1) Use petitioner's copies with the Industrial Commission bearing the stamp of June 1, 1971, or (2) *that petitioner be allowed to xerox his own records.*

This hearing was held before Getzendanner and petitioner was requesting the same relief that Moulin had offered Cohn on April 20, 1970:

> "Mr. Cohn: I am going to spend a thousand dollars to photostat all these records. They charge 40¢ a page.

The Commissioner: *Photostat them yourself.*

Mr. Cohn: My point is, these are all Petitioner's Exhibits.

The Commissioner: *It's your appeal. Why don't you photostat them yourself and submit the photostats of these?*" EXH. #37 App. pg. 200A-211A (Tr. of Proc. pg. 7)

During the hearing on petitioner's emergency petition on July 19, 1971, due to the controversial nature of the proceedings, the room was full of lawyers who practice before the Commission. Cohn objected to petitioner having the same relief as had been granted him saying:

"* * * . . . This petitioner asks the Commission to go beyond its statutory authority and, therefore, *we are opposed to the petition or either of its alternatives.*"

"* * * The Petitioner: . . . When the petition for review was filed and was brought up by Mr. Cohn, Mr. Cohn made a motion to get the Court to use the original documents and the original documents were used on the petition for review so that Mr. Cohn could save money. If you look in the file, you will see Mr. Cohn's petition for review which spells out the details that Mr. Cohn shouldn't be charged for any of the exhibits that were put in by the petitioner. *I want the same relief that Mr. Cohn had.*" (TR of Proc. pgs. 8, 9) EXH. #39 App. pgs. 213A-225A.

* * * "Mr. Crane: *I think we have a constitutional question then.*

The Commissioner: *I suspect that constitutional questions come along in the Courts rather frequently.* I am going to deny the relief requested on the grounds that we have no jurisdiction once the order has left the Commission, either from the statute or from case law. * * * You may have grounds before the Court to ask them.

The Petitioner: I have already discussed this with the Court and it is the Court's opinion that the records that you have in your vault can be xeroxed and there

is no need to make a completely new transcript. (TR of Proc. pgs. 9, 10) EXH. #39 App. pgs. 213A-225A.

"The Commissioner: I think that your motion is sufficient to indicate you are paying under protest. That will preserve any right you have to recoup that money, should the Court rule in your favor. Until such time, we will have to comply with what the statute sets forth. I am denying your motion for money to be used as bond and order you to comply with the statutory requirements of the Act." (TR of Proc. pg. 13) EXH. #39 App. pg. 213A-225A.

Petitioner was forced to pay $1,375.00, and paid same under protest, for the record to be sent to the Circuit Court on writ of certiorari. EXH. #40 App. pg. 226A.

On July 20, 1971 during a discussion between Kern and petitioner regarding transcript costs, Kern alleged that one reason the charges were so high was that the exhibits were not in the record because respondent should have paid for it in his Petition for Review but he did not do so, because Moulin allowed him leave to use the original evidentiary documents instead of xeroxing them (EXH #37) 200A-211A. (TR of Proc. 4/20/70); that they had to be inserted and nobody was going to do it for nothing—not all that work and not get paid for it.

Kern alleged her charges for xeroxing was fifty (50¢) a page. Petitioner obtained negotiable prices from xerox firms on the street, ranging from 8¢ to 25¢ a sheet, depending on the amount of work and Kern agreed this was true. At the present time, xeroxing can be done on the street at 5¢ a copy with no minimum requirement.

Kern insisted that petitioner take the exhibits, have the transcript retyped and showed him how to insert the exhibits into the record so that it would be complete and

thus perfect his appeal to the Circuit Court. Kern "signed out" the exhibits from the vault in her name and instructed petitioner to return the record to the Transcript Department to the receptionist (who knew all about this transaction) on the 13th floor of the State of Illinois Building at 160 N. LaSalle St., Chicago.

Kern advised petitioner not to say anything to anybody; that she would sign her name to the record and Jayne E. Price would certify the record without knowing the full details.

Petitioner did not follow Kern's instructions as he refused to be a party to any scheme of retyping and/or xeroxing of any portion of the record. Petitioner also did not authorize the Industrial Commission to retype the transcript. EXH. #41, App. pg. 227A.

On August 16, 1971 Petitioner filed a complaint in the United States District Court, Seventh Circuit under the Civil Rights Act. Due to the lack of legal expertize, petitioner filed under the wrong jurisdiction, which should have been 28 U.S.C., Sec. 1343. Petitioner did file under 42 U.S.C., 1983 and 1985 which was correct. Petitioner should have made Commissioner Moulin and Roselle Kern a party to the complaint instead of the State of Illinois.

On September 3, 1971 the Illinois Industrial Commission filed a motion to strike and motion for a more definite statement from plaintiff.

On October 4, 1971 petitioner filed an Answer to the above mentioned motions, alleging in pertinent part that the State of Illinois Industrial Commission (Moulin and Getzendanner, acting under color of state law) discriminated against plaintiff and that this was an intentional and purposeful act of conspiracy to deprive plaintiff of due process and

equal protection under the law, and the action that the Industrial Commission (Moulin & Getzendanner) took deprived plaintiff of equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

On September 7, 1971 petitioner filed a motion in federal court for Judge McGarr to take Protective Custody of the Original Exhibits given to petitioner by Kern. J. McGarr denied the motion on September 22, 1971. EXH. #42, App. pg. 228A.

On March 3, 1972 Jayne Price advised by letter that she had certified the record on February 25, 1972 on writ of certiorari to the Clerk of the Circuit Court of Cook County even though the exhibits were still missing from the record. EXH. #43, App. pg. 229A.

On March 6, 1972 petitioner examined the certified record filed by the Industrial Commission with the Circuit Court and found a discrepancy in the number of pages that were supposed to be part of the record.

On March 6, 1972 the Clerk of the Circuit Court certified the number of pages in the record that was filed, to be 1,355 including an unknown number of to-wit pages where the exhibits were to be inserted. EXH. #44, App. pg. 230A.

However, on or about July 16, 1971, petitioner together with employees of the Industrial Commission had counted approximately 2,061 pages of the record, yet incomplete. EXH. #45, App. pg. 231A.

The foregoing on transcript charges, original exhibits and itemization of charges are all set forth in petitioner's Complaint—Count III, pgs. 32-35, paragraphs 35-39 filed in U.S. District Court, EXH. #46, App. pgs. 232A-235A. This is also set forth in petitioner's brief to the Illinois Supreme Court.

Petitioner's Complaint in the U.S. District Court alleging discrimination and conspiracy was dismissed for failure to state a claim and lack of jurisdiction. The Court of Appeals affirmed the decision in an unreported decision and due to lack of legal expertize, petitioner did not get a chance to file for writ of certiorari before this court. EXH #33, App. pgs. 184A-186A.

When the Clerk of the Circuit Court of Cook County, Illinois prepared the record from the Praecipe for appeal to the Illinois Supreme Court, five (5) items were missing from their records. One of the items was Volume #1 (1 of 3 volumes) totalling approximately 416 pages of transcript of proceedings on arbitration in the Industrial Commission and, one volume totalling 204 pages of Brief of Transcript of Proceedings on Arbitration (referred to in EXH. #35, App. pgs. 195A-196A. This is the 204 page Brief of Transcript of Proceedings that petitioner had to file three (3) times as it mysteriously disappeared twice.

After petitioner filed suit in the United States District Court:

1. He was refused access to his records in the Industrial Commission;

2. U.S. District Judge McGarr entered an Order on February 23, 1972 allowing petitioner access to the Industrial Commission Records for copying and inspection. EXH. #47, App. pg. 236A.

3. The Illinois Industrial Commission and the Assistant Attorney General who represented the Illinois Industrial Commission refused to obey J. McGarr's Order of February 23, 1972.

4. Petitioner filed an Affidavit on March 6, 1972 in the United States District Court regarding the Commission's refusal to carry out Judge McGarr's Order of 2/23/72. EXH. #48, App. pgs. 237A-240A.

5. On April 27, 1972 petitioner filed a motion in the Circuit Court of Cook County and requested therein that the Court:

> "Order the Illinois Industrial Commission to allow petitioner to examine the record and make necessary copies thereof, of all matters that should be before this court."

On May 4, 1972 the hearing on the motion was had before J. Egan:

> "The Court: Your second motion I am going to give you three minutes to argue. Go ahead.
>
> Mr. Crane: The records are not complete. We wanted the Industrial Commission to allow us to go in and xerox any and all copies that are necessary to bring before the court. That's it.
>
> The Court: * * * . . . The Motion is denied." (Tr. of Proc. pgs. 10, 12). EXH. #49, App. pgs. 241A-244A.

On April 26, 1972 petitioner filed a Motion in Circuit Court, Cook County, Illinois to Compel the Illinois Industrial Commission To Explain To The Court Why the Complete Records of the Illinois Industrial Commission Hearing * * * were not filed with the Clerk of the Circuit Court on Writ of Certiorari.

This motion was also heard on May 4, 1972 before J. Egan. Donald W. Fohrman, Assistant Attorney General, appearing on behalf of the Illinois Industrial Commission explained to the court regarding Abstracts:

"Now, in deference to Mr. Crane I think we should explain to him, since he is not an attorney, that briefs and abstracts are for the use of the Commission and various Commissioners and not evidentiary and are never sent up on Writ of Certiorari. This is evidentally one of the items that is missing. It is missing for a reason." (Tr. of Proc. pg. 11) EXH. #49, App. pgs. 241A-244A.

Judge Egan denied this motion also. (Tr. of Proc. pg. 12) EXH. #49, App. pgs. 241A-244A.

However, Cohn's Abstract was sent up on the writ of certiorari and during a hearing on September 11, 1972 before Judge Egan, Cohn stated to the court:

"* * * Then just let me say one thing. I have in the record—and I would request in conjunction with what he files—that we have filed, sometime ago we filed about a nine-page abstract and point of authority *which is part of that record* already so I only ask that that be considered at the same time." (Tr. of Proc. pg. 25). EXH. #50, App. pgs. 245A-272A.

Supreme Court Rule 321, Ill. Rev. Stat. 1967, C110A, Sec. 321 provides in pertinent part:

"The record on appeal shall consist of the judgment appealed from, the notice of appeal, and other parts of the trial court record designated in the praecipes. *The trial court record includes any report of proceedings and every other document filed and judgment and order entered in the cause.*"

On June 26, 1973 petitioner filed a motion with the Illinois Supreme Court for an Order directing the Industrial Commission to file the complete record with the Illinois Supreme Court, or to allow petitioner to make the necessayr copies from their record. On July 9, 1973 the Illinois Supreme Court entered an order allowing petitioner ac-

cess to his Industrial Commission records, which Order was obeyed by the Industrial Commission. EXH. #51, App. pgs. 273A-275A.

On August 6, 1973 petitioner filed an Ex Parte Motion in the United States District Court, Seventh Circuit, to release the entire record in that Court for transmittal to the Illinois Supreme Court. Judge McLaren, sitting as emergency Judge, declined to rule and put it over for J. McGarr's return. EXH. #52, App. pgs. 276A-294A.

On August 8, 1973 petitioner filed a motion with the Illinois Supreme Court to supplement the Circuit Court record with the entire record from United States District Court Case #71 C 2014. EXH. #52, App. pgs. 276A-294A.

The Illinois Supreme Court ordered that petitioner could file certified copies of such portions of the Federal record as he sees fit, on or before September 12, 1973. Cohn did not make an objection to the motion nor did he make an appearance. In this motion before the court, Cohn's letter to the insurance carrier regarding J. Egan was one of the exhibits in support of the motion. EXH #55, App. pgs. 298A-299A.

However, on August 15, 1973 (according to the postmark on the envelope), an untimely objection was filed with the Illinois Supreme Court together with an appearance in the case of Samuel L. Bullas, of counsel, for respondent. EXH. #53, App. pg. 295A (Order dated 8/14/73).

Upon examination of petitioner's ex parte motion, J. McGarr denied the motion on September 10, 1973 but allowed certified copies to be made of the record in the United States District Court.

Upon examination of the federal court records on November 19, 1973 with a clerk of the U.S. District Court, petitioner discovered documents/exhibits missing, totalling approximately 42 pages.

There were 28 pages missing, from a total of 471 pages, of the First Admissions filed December 1, 1971 in federal court.

There were 13 pages missing, from a total of 260 pages, of the Second Admissions filed March 8, 1972 in federal court.

These were not loose sheets but were bound and fastened with an acco fastener at the top, in their order of filing in the record.

At the time of filing the above Admissions with the court, each and every defendant received, and signed for, a copy of the documents. Petitioner has, in his possession, the signed receipts from each and every one of the four (4) defendants in the case.

In a discussion that took place with all parties present, before respondent wanted to make a record (transcript) the Arbitrator advised petitioner that he could bring in affidavits and he would accept them into evidence; then when petitioner brought in the affidavits, he wouldn't allow them in, over the objection of respondent.

> "Mr. Crane: I mean it, I asked you prior to this, I asked you prior to this if I could bring in affidavits and you said yes.
>
> The Arbitrator: All right. Let's continue. I am not going to argue.
>
> Mr. Crane: Did you say that, sir?
>
> The Arbitrator: Let's continue.

Mr. Crane: Did you say that, Mr. Callahan?

Mr. Cohn: You mean you were discussing this matter with the arbitrator outside of my presence? I don't believe that.

Mr. Crane: I asked if I could bring in affidavits—" (Tr. 556, 557).

These missing documents from the federal court record were some of the same that petitioner had identified and offered into evidence at the Industrial Commission which were objected to by Cohn and sustained by the Arbitrator. They are:

Request for Admissions Filed 12/1/71 in U.S. District Court:

(f) Affidavit of Al Maske. One of the men working with petitioner at time of accident and a witness to the accident. EXH. #3, App. pg. 113A.

(g) Affidavit of Joe Garvil. One of the men working with petitioner at time of accident and a witness to the accident. EXH. #4, App. pg. 114A.

(k) Affidavit of Arnold L. Crane with Exhibit A&B attachments.

Exhibit "A"—M. Stein statement. (petitioner's attorney). Statement written on Holiday Inn Stationery on July 1, 1969 re Louis J. Cohn's request for personal release so that petitioner wouldn't sue Louis J. Cohn for conspiracy.

Exhibit "B"—M. Stein notes. Notes made by M. Stein, petitioner's attorney, on day of Dr. Tansey's and Dr. Scuderi's testimony at Industrial Commission Hearing.

(l) Affidavit of Arnold L. Crane, petitioner, with attachments, Exhibits C, D, E, F, G, H & I. EXH. #1 & #2 App. pgs. 100A-112A.

Exh. C—Letter from Attorney for Joseph Lumber Company to Mr. Joseph Joseph.

Exh. D—Affidavit signed by petitioner for Joseph Lumber Co. at insistance of Joseph's attorney releasing Joseph Lumber Co. of responsibility of accident. Injury took place at Joseph's yard. Joseph's was a subcontractor of Corbetta Construction Company (petitioner's employer).

Exhibit E—Affidavit drawn up by Joseph's attorney for Joseph Lumber Company to sign.

Exh. F—Affidavit of Joseph Joseph. This affidavit was to be in lieu of their coming in as witnesses at the hearing. Arbitrator Callahan gave permission for this and then rescinded it after affidavits were obtained and refused to allow them in the records.

Exh. G—Affidavit drawn up by Joseph's attorney for Edward Galuteri to sign.

Exh. H—Copy of Affidavit, with deletions made by Edward Galuteri, that attorney had prepared.

Exh. I—Affidavit of Edward Galuteri. Employee of Joseph Lumber Company who helped Corbetta Construction Company employees carry forms.

(m) Affidavit of Arnold L. Crane re refusal of Louis J. Cohn's office to accept abstract of transcript of Industrial Commission, Case #784019, delivered by petitioner. EXH. #31 App. pg. 179A.

(o) Affidavit of Arnold L. Crane—conversation with Alexander White, Chairman of Industrial Commission, wherein Chairman White told petitioner to "sue me".

(p) Charles A. Thompson Affidavit—Secretary-Treasurer of the Chicago District Council of Carpenters. Affidavit relative to firing of union workers after being injured on the job. EXH. #6 App. pgs. 118A-119A.

Request for Admissions & Evidence Filed 3/8/72 in U.S. District Court:

(F) Affidavits:

1. Affidavit of Arnold L. Crane, petitioner, explaining what happened after motion made on 2/23/72 before J. McGarr. The refusal of Chairman White to allow petitioner to see and copy the records of Illinois Industrial Commission, case No. 784019 Arnold Crane v. Corbetta Construction Co. EXH. #48 App. pgs. 237A-240A.

2. Affidavit of Arnold L. Crane, petitioner. Statements made by Louis J. Cohn, attorney for Consolidated Mutual Insurance Company, at the Oral Argument at Industrial Commission and petitioner's comments to his statements.

3. Affidavit of Claire Crane, wife of Arnold L. Crane, petitioner in case No. 71 C 2014. Statement made after meeting with Chairman Carey of the Illinois Industrial Commission in which attorney for Consolidated Mutual Insurance Company, Louis J. Cohn, was present.

4. Affidavit of Claire Crane, wife of Arnold L. Crane, petitioner. Statement made after going to the Claims Department of the Illinois Insurance Department to get accident report and/or information regarding same in connection with Case No. 784019 Arnold Crane v. Corbetta Construction Co.

Because of an oversight, petitioner failed to file the necessary certified copies in accordance with the Illinois Supreme Court's Order of August 14, 1973. EXH. #53 App. pg. 295A.

Petitioner wanted the Illinois Supreme Court to have all these records so that they would have a clear and concise understanding of the entire case. On November 24, 1973 petitioner filed a motion with the Illinois Supreme Court requesting permission to file additional federal court documents. On November 29, 1973, the Court's Order said in part: "The part of the motion for leave to file copies of certain documents is denied." EXH. #54 App. pgs. 296A-297A.

On September 11, 1972 a hearing was held before Judge Egan in the Circuit Court, Cook County, Illinois. Cohn appeared for respondent and petitioner appeared pro se. EXH. #50 App. pgs. 245A-272A. Quoted, in part, pages 23 and 24 of the transcript:

> "The Court: Listen, no one has had more problems with pro se litigants and particularly in workmen's compensation cases than I have, and it is not only workmen's compensation cases. It is always a problem. And I wish I knew the answer to it. I have come to the conclusion that I have had some pro se appearance where on their face seemed without merit but when I get into them I discovered that the person did have a respectable argument to raise before me so I could, I am sure, listen to him argue for about an hour and then say I will take it under advisement and then just leaf through this and say: Affirmed. I am not going to do it. If it is burdensome, it is going to be burdensome for all of us. It is burdensome for me. No one would like to get rid of a case as much as I when I see I might have 2,000 pages to read. A lot of it, I am sure, is going to be disconnected and rambling. He is entitled to his day of trial."
>
> "Mr. Cohn: Absolutely. He has already filed the brief."

On September 12, 1972 Cohn sent Judge Egan an Abstract previously filed with the Commission, together with an additional page of citations, and a copy of the letter and

the attachment was also sent to petitioner. Inadvertently enclosed with the above copy to petitioner was an "original" of a letter, which we quote in full for the court's convenience. EXH. #55 App. pg. 298A-299A.

"September 12, 1972
Miss Diana Armstrong
Consolidated Mutual Insurance Company
410 North Michigan Avenue
Chicago, Illinois

RE: ARNOLD CRANE
vs. Corbetta Construction Company
File No. 14-44047

Dear Miss Armstrong:

We spent the entire morning of September 11, in Judge Egan's courtroom all to no avail. After allowing Mr. Crane to ramble on for some length of time Judge Egan then granted him thirty days to file a ten page document containing what Mr. Crane considers to be the significant errors on the record which he was relying. Further the Judge demanded that Mr. Crane put in this document what action he wishes the Court to take and the basis for that action. He has been given thirty days to file this document and the Judge indicated that after receipt of that document and the reading of my abstract and final points of authority he would then render a decision subsequent to that date.

It appears that Judge Egan is also very wary of Mr. Crane and is afraid of setting Mr. Crane off once again. In addition, I think he wants to have on the record all of Mr. Crane's peculiar notions so that a reviewing court will realize that there was no relief which Judge Egan could have given Mr. Crane under any circumstance.

Very truly yours,
COHN, COHN & LAMBERT
By: */s/ Louis J. Cohn*
Louis J. Cohn

LJC:db
cc: Mr. James Laiacona"

The above quoted letter is an exhibit with a motion filed in the Illinois Supreme Court August 9, 1973 to supplement the record with the federal record and also an exhibit with the ex parte motion filed in federal court with the same request. supra EXH. #52 App. pgs. 276A-294A.

During the course of the hearings before the Industrial Commission, Mr. Cohn testified that he couldn't probe the minds of third parties: EXH. #52 App. pgs. 276A-294A.

"Mr. Cohn: A. You are asking me to probe in the mental processes of another person, which I can't do. (Tr. 427)-284A.

Mr. Cohn: I don't think that I can answer the question which seeks to probe the mind of a third person. (Tr. 447)-284A.

Mr. Cohn: A. No. I can't probe the mental processes of a third party. For the objection I have made prior to that with regard to comments on it, I can't answer the question." (Tr. 457) App. 284A.

On December 22, 1972 at a hearing in Circuit Court, Cook County, Illinois before Judge Downing, who was hearing cases for J. Egan, we quote from Transcript of Proceedings, pages 9 and 10·

"Mr. Crane: With the Court's permission, we would like to hand this.

Mr. Cohn: I am going to take a lot of objection to that. Through an inadvertience, Mr. Crane obtained a copy of a letter I sent to an insurance company during the pendency of this case. *And it is completely prejudicial.*

Mr. Crane: This is before Judge Egan.

The Court: Was that a matter before the Industrial Commission?

Mr. Crane: Yes, sir. It goes right to the heart of the issue of which you are going to rule on. I think it should be part of the record. Judge Egan has a copy of this.

The Court: Judge Egan may have a copy of it, but Judge Downing doesn't.

Mr. Crane: We submit it to the Court, if the Court would like to read it.

Mr. Cohn: I object to it being a part of the record or submitted. It has to do with a letter I sent to my principal following a hearing in front of Judge Egan, as to what transpired in that courtroom that day.

Mr. Crane: What he says in the letter and what the record shows is two different things. It is a difference between day and night.

The Court: Mr. Crane, I don't think it would be appropriate, what Counsel said to his client. Nor do I think what Judge Egan may have said insofar as some of the preliminary matters that were before him, Judge Egan, no longer is involved in this case. I am the one who is charged with the responsibility of making the decision. I don't want in any way to be influenced as to what Mr. Cohn may have said to his client. Nor am I going to be guided by what Judge Egan may have said as to any preliminary matters before the court. So, I will hand it back to you and will not accept that as a part of the record.

Mr. Crane: We will take exception to your rule.

The Court: You might indicate that is a letter dated . . .

Mr. Crane: September 12, 1972.

The Court: And it is from Mr. Cohn to his client.

Mr. Crane: Right." EXH. #56, App. pgs. 300A-302A.

Dr. Robert Moore, one of petitioner's doctors and a witness for the carrier, testified on cross examination that he was an Orthopedic Surgeon certified by the American Board of Orthopedic Surgery. (Tr. 940)

Dr. Moore also testified that lipping of the vertebra means there is some ossification of the ligaments that bind the vertebrae together. This is relatively normal finding

in most persons after the age of thirty. (Tr. 955) Further testimony is quoted for the convenience of the court (Tr. 956). (RE: Myelogram 12/28/64. (Tr. 942))

"Q. On the x-rays did you find any?
A. No.
Q. There were none?
A. Not on the myelographic x-rays.
Q. And these are the first x-rays that were taken at Billings Hospital?
A. That's correct.
Q. There was no lipping of any vertebrae?
A. Not that we could see on the myelograms.
Q. What indication would lipping of the vertebrae mean to you?
A. Lipping of the vertebrae is an age change in the spine.
Q. Could it be due to traumatic arthritis in your opinion?
A. It could.
Q. Would you say that Mayo Clinic is a reasonable clinic to go to for back problems?
A. It is an excellent place to go for back problems.
Q. It's an excellent clinic?
A. It has an outstanding reputation all over the world."

Cohn was asked on direct examination, what lipping of the spine was and he testified that he couldn't answer nor would he answer that question. (Tr. 479)

Dr. Moore further testified, when looking at later x-rays, that there was slight lipping of the margins of the 4th and 5th vertebral body. (Tr. 1127-1128) These were x-rays taken by Drs. Fahey and Maylahn, Exh. 35-41 (Tr. 775).

Dr. Moore was asked if he saw the x-rays that were brought in this morning showing his back in 1964 and compared them with the x-rays he now sees in the box, could he tell the difference if there was a narrowing of the space

between the 5th and the sacrum. Dr. Moore testified: "Yes. In the lateral view and posterior view. These, one cannot."

The following is quoted for the convenience of the court:

"Mr. Cohn: Have you got a lateral view?
Mr. Crane: You won't allow those to go into evidence?
Mr. Cohn: If you've got a lateral view you can let it in.
Mr. Crane: You want me to put them all into evidence?
Mr. Cohn: No. You got a lateral view. I'll let him look at it." (Tr. 1132-1133)

During the cross examination of Dr. Moore, petitioner tried to introduce into evidence, the jacket which contained the medical x-rays of petitioner taken by Drs. Rabin and Turner, that he had in his possession and which Dr. Scuderi testified to. Cohn objected and the Arbitrator sustained. (Tr. 865-866)

Petitioner then tried to introduce the x-rays into evidence and Cohn objected and the Arbitrator sustained. (Tr. 1106)

The Arbitrator stated that he had no real objection to the x-rays being offered out of turn, but didn't see where any proper foundation had been laid. (Tr. 1107-1108)

Dr. William Tansey, petitioner's doctor, testified on direct examination, that if you take a normal spine and looked at it five or six years ago and if the man sustained trauma over a period of four or five years, from the time of the trauma to this time, he would expect certain changes to occur over that period of time, and it could be the result of trauma; and that depending upon the severity of the trauma, you're going to have injury to the superficial bone

structures, to the deep bone structures of the back which could cause lipping, which could cause narrowing such as would be present in these x-rays. (Tr. 823-824)

Dr. Tansey further testified that the diagnosis he would have now would be one of degenerative arthritis in the area. He has some degenerative disc disease which is also present. I am sure that there is a combination of these two factors which could well relate to the trauma that he sustained several years ago. (Tr. 825)

Further testimony of Dr. Tansy on direct examination (Tr. 815-816):

"Q. No. 38?

A. Yes. This is a lateral view of the lumbar spine and it does show a loss of the normal lordotic curve in the lumbar spine. It shows some narrowing between —well—T-12 and L-1.

Q. Between T-12 and L-1?

A. Yes."

Referring to the myelogram of 12/28/64 (Tr. 942), Dr. Moore testified that he did not see any evidence of degenerative arthritis when he looked at these films. (Tr. 958)

Dr. Moore testified on cross examination (Tr. 967-968):

"Q. Well, will a fusion always cure the symptoms a person has?

A. No.

Q. Why not?

A. I can't answer this question in a general way.

Q. Well, answer it the best you can. If a person goes in for an operation they can expect to be cured?

A. Sometimes the symptoms may be referable to other parts of the spine than the segments that are fused.

Q. In other words, you're saying you really don't know what's going on in the spine, isn't that right?

A. Oh, one should know definitely before one advises a fusion. However, sometimes symptoms may be diffused in the spine and you might fuse one segment to relieve the segments that are referable above or below.

Q. In other words, you could have it up above or below. That's logical, isn't it?

A. Well, it's a fact."

Dr. Moore testified that he didn't know what was normal or abnormal in subjective complaints. He said we all have subjective experiences of discomfort or sometimes pain or sometimes in coordination and this is all one experiences in his own mind and he could not account for other people's subjective complaints, and that's all he listens to day in and day out. He also stated that "Every individual is different. No two are alike in the world." (Tr. 964)

The significance of Dr. Tansey's testimony to the fact that there is a narrowing between T-12 and L-1 of petitioner's spine and Dr. Moore's testimony is that a fusion will not always cure a person's symptoms, that the symptoms may be referred to parts of the spine other than the segments already fused. When one speaks of symptoms being referred, the inference is that the pain is being referred.

Dr. Rabin further testified that the medication he gave petitioner was Robaxin and antispasmodic tablets; that he only gave one dozen of those tablets and nothing else for pain. (Tr. 1023, 1024)

Petitioner testified that Dr. Rabin gave him some muscle relaxants and some other pills. (Tr. 131)

On cross examination, Dr. Rabin testified further regarding the cost of the pills (Tr. 1025, 1026):

"Q. How much do these pills cost, doctor?

A. I don't know.

Q. You don't know or you don't want to know?
Mr. Cohn: Objection.
The Arbitrator: Sustained. Don't argue with the witness, counsel—or, Mr. Crane.
The Witness: You were charged $7.50 on it. I see where the charge is—oh, which means that—
Mr. Crane: Which means what, doctor?
A. Which means there was an error in the charge because it should have been seventy-five cents.
Q. Did you collect this money from the insurance company?
A. Definitely so.
Q. But you made a mistake.
A. I didn't. My girl did.
* * * The Arbitrator: Well, counsel—I mean, Mr. Crane, that's a matter of conclusion and you have pointed out the discrepancy. The record will speak for itself. But whether it was an over-charge or a mistake is not particularly germane to this hearing. The doctor has testified."

Cohn put Dr. Rabin on the stand at 2:00 P.M. and the arbitrator advised petitioner at 3:30 P.M. that he had been cross examining Dr. Rabin for an hour. The arbitrator told petitioner that he had 15 minutes more to finish with the doctor, then he was going to ask the doctor to leave the room and said to petitioner: "Let's get going." (Tr. 1055)

According to what the arbitrator said, petitioner, a pro se with no legal expertise had one hour and fifteen minutes (1¼ hr.) to cross examine a doctor, which consisted of 55 pages of cross examination. (Tr. 1009-1064)

Dr. Rabin testified further on cross examination (Tr. 1056):

"Mr. Crane: When did you release me, doctor?
A. November 16, 1964.

Q. Did I need any more medical treatment?

A. At that time we thought you could go to work. I didn't know if you needed any further treatment—medical treatment. I didn't think so.

Q. You say you didn't know?

A. I didn't think so at that time when we sent you to go to work."

Petitioner asked Dr. Rabin: "If I needed more medical treatment what was I supposed to do", and Dr. Rabin testified (Tr. 1057):

"The Witness: If you injured yourself then you'd have to go to see a doctor; either come back to our office or wherever you would go for further care and treatment."

Petitioner asked Dr. Rabin if he had written a letter to Consolidated Mutual when he told petitioner he was completely well and the doctor testified: "I told you to go back to work. Certainly." (Tr. 1057)

Petitioner asked: "And also receive no more treatment from Consolidated Mutual?" Dr. Rabin testified: "You were discharged from treatment, correct."

"Q. In other words, I could go wherever I wanted to go to get treatment? I wasn't instructed by you to come back to you, was I?

A. I didn't instruct you to come back, correct.

Q. What was I supposed to do if I need more medical treatment?

A. We didn't think you would need any more medical treatment. We didn't know.

Q. What was I supposed to do when I needed medical treatment.

The Witness: If you need medical treatment you could have come to us and we then would have called the insurance company to determine if they would have allowed us to continue the treatment for your own self.

Q. In other words, you terminated my treatment?
A. I terminated you to go to work. That's what I did." (Tr. 1058-59)

On Tr. 1059, Dr. Rabin testified further on cross examination:

"Q. Actually, what happened is that after I was fired from the job that I was working on, you rendered me medical treatment, isn't that correct?
Mr. Cohn: Objection. Objection to the statement after I was fired from the job."

and on Tr. 1060, the Arbitrator said:

"That's assuming facts not in evidence. I don't know whether you were fired or not."

but back on Tr. 274-275, the Arbitrator said:

"Mr. Crane, why don't you simply make your statement. He won't object to the statement being made. This will be testimony from yourself as petitioner, you were fired for union activities.
Mr. Crane: That is exactly right.
The Arbitrator: Are you testifying to that?
Mr. Crane: I am testifying to that.
The Arbitrator: All right. You object to that, Mr. Cohn?
Mr. Cohn: No. I said I wouldn't several times."

Dr. Rabin testified that there was a letter dated November 16th and that it stated petitioner did not need any more treatment. (Tr. 1061)

On Tr. 1061-1062, Dr. Rabin testified:

"Q. Were you in contact with Mr. Phillips regarding injured employees?
A. What do you mean injured employees?
Q. Injured employees that worked for any of the insurors by Consolidated Mutual?
A. At the time, of course, I was in contact with him.

Q. Did you ever discuss my case with him?

A. Possibly. Most likely. I don't recall one way or the other.

Q. Do you know if I asked the insurance company for medical attention?

A. I do not.

Q. You don't know if they refused to give me any medical attention, do you?

A. No, sir.

Q. But I am entitled to medical attention under the laws of the State of Illinois, isn't that correct?

Mr. Cohn: Objection.

The Arbitrator: Sustained. You've got about five minutes."

"We" has never been clarified as to just who "we" includes; since Dr. Rabin doesn't remember discussing petitioner's case with Phillips—who is "we"? The mystery of "we" is still unsolved.

When Dr. Rabin was asked, on cross examination, if any lawyer—Douglas F. Stevenson—ever asked him or the insurance carrier for any medical treatment for petitioner, Dr. Rabin testified: "No Sir." (Tr. 1061-1062)

Cohn moved to terminate the cross examination of Dr. Rabin on Tr. 1053 after some forty-three and one-quarter (43¼) pages of petitioner's cross examination and renewed his motion to terminate Dr. Rabin's testimony on Tr. 1054, claiming the witness was being harassed. Petitioner's Exh. #35 thru #41, x-rays taken by Drs. Fahey and Maylahn (Tr. 775) were received into evidence and Dr. Rabin, on cross examination was asked to interpret them. Cohn objected to any questions concerning the x-rays previously testified to and the Arbitrator sustained. (Tr. 1063, 1064)

"Mr. Crane: Well, I object that the doctor can't look at the x-ray and interpret what they mean. This I do not understand. If the Court will be kind enough

to tell me why this doctor cannot look at x-rays and interpret them.

The Arbitrator: I made my ruling. If you want to take exception to my ruling, you may.

Mr. Crane: I take exception to this entire thing.

The Arbitrator: All right. You'll have an opportunity to review at any time.

Mr. Crane: That doesn't make any sense at all. For the record, this doesn't make any sense at all to me. These are in evidence and I can't ask the doctor about them? I don't understand it. The law books I have been reading have been all wrong.

The Arbitrator: All right. Are you finished with this witness? It is now 4:45.

Mr. Crane: No, I am not finished with the witness.

The Arbitrator: I shall dismiss him." (Tr. 1063, 1064)

Petitioner was examined by Dr. Shafer, the carrier's physician, on October 26, 1964. The Industrial Commission and the courts refused to allow petitioner to secure the medical records of this examination by the examining physician as to the extent of disability on that date.

Dr. Rabin, the carrier's treating doctor, testified on direct examination for the respondent at the Illinois Industrial Commission Hearing (Tr. 1007):

"A. * * * He was then seen on 10/23/64 at which time the back was soft. Motion was good. The patient complained he had pain in the back, a catch in the sacro-iliac area.

Q. What do you mean that the back was soft?

A. There was no spasm. The musculature was in a normal tonicity.

Q. Go ahead.

A. The patient had equal and normal motion of the hips, knees and ankle joints. He was then seen on 10/26/64. Given a large whirlpool treatment to the back and lower extremities and he stated that he hadn't returned to work."

Petitioner was examined on October 26, 1964 by Dr. Shafer, the same day that he was given treatment by Dr. Rabin (testified to above). (Ind. Com. Pet's Exh. #18). EXH. #20, App. pg. 135A, EXH. #21, App. pg. 136A. (Dr. Lutterbeck's letter to petitioner).

After Dr. Shafer's examination on 10/26/64, petitioner was instructed by Howard Phillips, the carrier's compensation manager, to go back to Dr. Rabin's office for physical therapy treatment.

Dr. Sid Shafer's records should show that petitioner still had a muscle spasm in his back at the time of this examination, as these were the findings which should be in the record and what Dr. Shafer told petitioner at the time of the examination. (Petitioner put everything in writing as it happens, as evidenced by Cohn's remark "I can't talk in front of you because you will have it in writing tomorrow." (EXH. #61, App. pgs. 328A-331A.)

On August 6, 1968 (Tr. 71) in a discussion between the Arbitrator, Cohn and petitioner regarding the possibility of settlement, petitioner stated that Cohn refused to give him any information (medical reports).

Cohn was called as petitioner's first witness and testified (Tr. 78) that he had the doctor's report with him but refused to allow petitioner to see or read it, saying:

> "Mr. Cohn: You are not entitled to examine them. I am here for the purpose of testifying as the Act specifically provides, and not for the furnishing of reports of treating doctors."

During cross examination of Phillips, petitioner asked Cohn for permission to see Dr. Shafer's records that he had with him and that he was quoting from, which were not in evidence, in order to refresh Phillips' memory; Cohn refused and the Arbitrator stated:

"The Arbitrator: Well, you can't do it that way—delve into his file for that sort of thing. There's no need for the production of Dr. Shafer's record here. You can't just get it by asking for it. Those are his records.

Mr. Cohn: I just told you.

The Arbitrator: If you want to see any records you go ahead and subpoena them. You can't just simply take them out of his file." (Tr. 1154-1155).

During the cross examination of Phillips on January 20, 1970, at the Industrial Commission Hearing (Tr. 1097), Cohn stated:

"Dr. Shafer is supposed to be here tomorrow morning to get his testimony taken care of."

On Tr. 1143-1144, Mr. Cohen stated:

"I have received a telephone call from Mr. Lambert saying that my doctor, Doctor Shafer is operating at the—was operating at the Skokie Valley Hospital when he received an emergency call from the Illinois Masonic Hospital and he will not be able to testify. So I will not belabor this hearing any further. I will have Mr. Phillips back at two for the purpose of—for Mr. Crane's cross examination."

The Arbitrator informed petitioner that he had seen Dr. Shafer in the hall at the Industrial Commission before Cohn made his statement. This was corroborated by Dr. Shafer's office, as shown in the following:

On January 29, 1970 petitioner called Dr. Shafer (Andover 3-6109) at 4:25 P.M. (Thursday) and asked the woman in his office if she had the records of petitioner's accident in 1964. She told petitioner that Dr. Shafer had them and that he had sat in the Industrial Commission for an hour and a half on Tuesday, January 20, 1970 waiting to testify. Petitioner told her he had a subpoena to look at the records and make copies, if necessary, and that he would be in within the next day or so to look at the records.

Petitioner went to Dr. Shafer's office on Monday, February 2, 1970 to look at petitioner's medical records. There were two women in the office (employees). Mrs. P. Gardiner, the woman at the desk refused to let petitioner see his medical records even though he explained that he had a subpoena. She said Dr. Shafer had the records and that his, or a lawyer, said not to show them to petitioner. (It could have been respondent's attorney). She refused to put all of this in writing.

On this same date, February 2, 1970, petitioner went to Dr. Harold J. Lasky's office (the x-ray radiologist) and asked if they had x-rays taken of Arnold L. Crane in 1964. Petitioner explained to the woman at the desk that he had a subpoena to look at the doctor's report and x-rays and she went away to get someone. Soon thereafter, Dr. Lasky came out and he explained to him that he had a subpoena to look at his report and x-rays.

Dr. Lasky refused to let petitioner see anything when he said he had a subpoena to see the records, saying it was most unusual and that he would have to ask his lawyer. Dr. Lasky then walked away from petitioner, went into another room and didn't return.

On April 17, 1972 petitioner filed a Motion in the United States District Court, Seventh Circuit, to Lift the Stay to Allow Plaintiff to Subpoena His Medical Records from Consolidated Mutual Insurance Company's Dr. Sid John Shafer. Said motion was never heard.

On April 23, 1974, petitioner filed a Motion in the Supreme Court of Illinois to Compel Respondent and/or Dr. Shafer to make Available Immediately Petitioner's Medical Records for Copying and Inspection and attached the motion filed in federal court on April 17, 1972 as Exhibit A. Respondent objected to the motion and the court denied the motion. EXH. #57, App. pgs. 303A-322A.

REASONS FOR GRANTING THE WRIT

Due process of law is secured it laws operate on all alike and do not subject individual tc arbitrary exercise of governmental powers.

It has been clearly established that a party can be required to produce only such documents or things as "are in his possession, custody or control." Frequently inspection will be ordered where the party against whom the order runs has the legal right to obtain the document, even though in fact he has no copy, and regardless of whether the document is beyond the jurisdiction of the court. Thus a party cannot escape discovery by turning the document over to his attorney or his insurer. A Motion was filed with this court for the production of Dr. Shafer's medical records of petitioner and the court advised they would request the records if they deemed them necessary for consideration for the Petition for Certiorari. EXH. #64, App. pg. 388A.

In *Monier* v. *Chamberlain*, September 23, 1966, 35 Ill.2d 351, 221 N.E. 2d 410, 18 ALR 3d 471, the court said:

> "Production order which required defendant automobile driver and insurer * * * to produce copy of automobile policy, medical reports of plaintiff injured in automobile accident, statements made by plaintiff or his family relative to litigation, all memoranda of insurer of such statements, statements of witnesses, reports, and photographs obtained by insurer prior to employment of independent counsel, were properly discoverable and not exempt or privileged from disclosure by "work product rule."

> "The rules of civil procedure designed to simplify the practice and procedure in the Federal District Courts have been the subject of more interpretative legal literature than almost any branch of law and more particularly did the case of *Hickman* v. *Taylor*, (329 U.S. 495, 67 S.Ct. 385, 91 L.ed. 451) account for a large part of it—a veritable Pandora's box."

In *Cannell* v. *Medical and Surgical Clinic*, S.C., 315 N.E. 2d 278 (1974), the court held:

> "that patient was entitled to be given his medical records without having to resort to subpoena, even though he was the petitioner in a proceeding to recover workmen's compensation benefits; that the fiducial qualities of the patient-physician relationship require disclosure of medical data to a patient or his agent on request, that the records themselves need not be turned over to patient."
>
> * * * "It appears that there are no reported Illinois decisions which establish the existence of such a duty. However, in a fairly recent case decided outside Illinois a physician was held to have a duty to permit inspection of medical records in the absence of legal proceedings in which disclosure could be compelled."

It's been well established that a fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability or unfairness and that to perform its high function in the best way justice must satisfy the appearance of justice.

The abruptness of petitioner's discharge and its timing are persuasive evidence as to the motivation behind the discharge.

This court has laid down the following rules for determining the legality of an employer's discrimination:

1. If an employer's discrimination is "inherently destructive" of important employee rights, the National Labor Relations Board can find that an unfair practice has been committed, even without proof of antiunion motivation and even if the employer proves he was motivated by business reasons;

2. If the effect upon employee rights of an employer's discrimination is "comparatively slight", antiunion motivation must be proved in order to find an unfair practice only if the employer has proved the discrimination was for business reasons;

3. If it has been proved that an employer's discrimination could have adversely affected employee rights to some extent, the burden is then upon the employer to prove that he was motivated by business objectives. However, this may be no defense if the discrimination is "inherently destructive."

It is well settled the employee need use the most reasonable form to express his grievance.

It has long been recognized that discharge of an employee for wrongful conduct is an inherent power of management and one expressly protected by law. However, such "wrongful conduct" cannot be used as a pretext to defeat the collective rights of employees which are otherwise safeguarded under Sec. 7 of the National Labor Relations Act. Nor should this court approve an employee's discharge which serves to condone a company's noncompliance with the laws enacted not only for the safety of its employees but for the public as well.

It was a common accepted illegal practice in the construction industry to fire employees after they were injured on the job and was inherently destructive to the welfare of the injured worker.

The injured workers were becoming victims of an unconscionable conspiracy between the insurance carriers and the employers. In order to protect the men on the job a Joint Agreement between Builders Association of Chicago, Inc. and Chicago District Council of Carpenters was enacted. EXH. #5, pg. 117A App.

> *Article VI*, Sec. 6.10, pg. 10: "In the event an employee is injured in the course of his employment, he shall not be dismissed from such employment because of his injury, nor shall he be dismissed during the period of medical care required by said injury . . . * * *"

SECTION 12—ILLINOIS WORKMENS COMPENSATION ACT — *Physical examinations.*

The carriers are enjoying unjust enrichment at the expense of the injured workers by the refusal of the Commission and the Courts to enforce the workmen's compensation act as to the legislative intent.

State officials, acting under color of state law, willfully, knowingly and intentionally allow some insurance carriers and attorneys, acting in concert, to commit an overt act by completely disregarding this Section of the Act. Some carriers abide by it and others do not. This action by the Illinois Industrial Commission is purposeful invidious discrimination, fraud and a conspiracy against a class or group of persons who find themselves in the same unfortunate situation as petitioner, and at the mercy of the insurance carrier.

Petitioner brought this flagrant act of the insurance carriers, state officials and attorneys to the attention of three (3) of the Chairmen of the Illinois Industrial Commission, the State of Illinois Insurance Department and the courts, both federal and state but no action was taken by any of them. Petitioner succinctly pointed this out in his brief on appeal to the Illinois Supreme Court but they clearly sidestepped the issues and refused to act in a responsible manner to safeguard the rights of petitioner and other injured workers.

Chairman Vorbeck was clearly sympathetic to the plight of the injured workers but alleged he couldn't do anything and soon after his discussion with petitioner, he resigned his position.

The Fourteenth Amendment requires that State officials exercise their responsibility and duty toward all classes of persons without distinction. The neglect of this duty with the knowledge that the insurance carrier has refused to adhere to the Statute is tantamount to invidious discrimination by state officials themselves. They should not be allowed to escape this duty simply by asserting that it is merely a matter of individual discrimination, when in fact it is discrimination against all injured workmen and should not be construed in any other way.

Petitioner discussed alleged complaints that the Illinois Industrial Commission refused to enforce the Illinois Workmen's Compensation Act with W. S. Gibson, Assistant Director of Insurance for the State of Illinois who was sympathetic, concerned and most cooperative but no action was ever taken. EXH. #31, App. pg. 179A.

The equal protection provisions of the Federal Constitution applies to the actions taken by administrative departments of local governmental units. An agency of the State denies equal protection when it treats persons similarly situated differently under the law.

It has been well established that the "under color of" provision encompasses only such private conduct as is supported by state action. That support may take various forms, but it is quite clear that a private person does not act under color of state law unless he derives some "aid, comfort, or incentive," either real or apparent, from the state. In the instant case the insurance carrier and their attorney received aid, comfort and incentive from the state.

In *Illinois Law & Practice*, Vol. 11, Sec. 412, p. 610, it states:

> "The guarantee of due process of law extends to every governmental proceeding which may interfere with personal property rights, whether the process be legislative, judicial, administrative, or executive, it relates to and covers all the instrumentation by which the state acts, and extends to the action of anyone who by virtue of public position under the state government deprives another of any rights secured by the guarantee."
>
> "Thus, the Fourteenth Amendment requires that state action, whether through one agency or another, be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions. However, the Fourteenth Amendment was not intended to bring within federal control everything done by a state or its instrumentalities which is simply illegal under state law, but only such acts by the acts or their instrumentalities as are violative of rights secured by the constitution of the United States."

The law is well settled that purposeful discrimination is a necessary element under equal protection clause of the Fourteenth Amendment and before state action can be held to a violation of right to equal protection it must be shown that complainant is a member of a class whose members are subjected to unequal treatment under the law and such may be shown by evidence that class is invidiously or arbitrarily drawn or that class, although validly drawn is treated unequally for no rational reason. When a statute confers a benefit, the benefit must be made available to all equally. To grant it to one class, while withholding it from another, is an invidious discrimination, intolerable under the equal protection clause of the Fourteenth Amendment.

It is well established that the law itself may be non-discriminatory on its face and impartial in appearance, if it is applied and administered by public authority with evil eye and unequal hand, so as practically to make unjust and illegal discrimination between persons of similar circumstances, material to their rights, the denial of equal justice is still within prohibition of Federal Constitution.

It is the individual who is entitled to equal protection of law and if he is denied the facility which under the same circumstances is furnished to another citizen, he alone may complain that his constitutional privilege has been invaded and he has right to enforce his constitutional privilege or right to waive it.

ACCIDENT REPORT:

An accident report was never filed and the record clearly establishes that the accident was not reported to the State of Illinois which is another overt act and violation of state law that shows the motives and intent of the alleged con-

spiracy between the employer and carrier and is clearly related to their attorney's fictitious rendition of his interpretation of the filing of the accident report. This is not another unrelated or isolated incident but shows a premeditated design to wilfully, knowingly and maliciously keep petitioner's name off of the official records of the Illinois Industrial Commission. The only conceivable reason why this accident would not be reported and the only logical and legal inferences that can be drawn from the facts above is that the employer and the carrier, for their own benefit, are covering up the fact that an accident occurred as the result of the alleged labor dispute.

TERMINATION OF MEDICAL TREATMENT WITHOUT A PRE-TERMINATION HEARING:

Termination of medical treatment without notice of a pretermination hearing is a well known national scandal of tremendous magnitude.

When an injured worker is deprived of a pretermination hearing, he is at the complete mercy of the carrier and if medical treatment is needed, the injured worker actually subsidizes the carrier with his meager savings, if he has any, until they are depleted. Prior to his hearing before an industrial board or commission, his only recourse for relief is to secure medical treatment as a welfare recipient which is degrading to human dignity and is anything but a socially desirable objective. Once the worker is forced to become a welfare recipient, then the state subsidizes the carrier at the taxpayer's expense.

In *Davis* v. *Caldwell*, 55 F.R.D. 373 (1971), p. 378, the court said:

> "* * * The Court concludes that workmen's compensation benefits are benefits of such a nature that termination of those benefits is so harsh as to cause 'serious injury' and should not be allowed without a prior hearing."

The court further stated:

> "* * * In effect it warns the carrier or employer to 'terminate now—litigate later', since the worst thing which can happen is an award of back pay retroactive to the date of termination."

In the instant case there was no pretermination hearing.

There are two elements which must be established before a claim to protection under the due process clause of the fourteenth amendment can be upheld. First, there must be a deprivation of "Life, Liberty, or Property." Second, the deprivation complained of must have been accomplished through "state action". Thus, only if the right to continued medical services can be classified as "property" and the injured worker's termination of medical services can be classified as state action, will due process protections have to be afforded the injured worker.

While continued medical service might not be considered "property" in the conventional sense, petitioner will endeavor to persuade this court to interpret this concept broadly to include important interests to which a person is entitled regardless of their technical or common law status. The court has held that due process protections apply to "takings" of drivers' licenses and of welfare payments—why not medical treatment or services.

Medical services are plainly important interests. Furthermore, a strong argument can be made that this interest is one to which injured workers are "entitled" in the same way that welfare recipients are entitled to assistance.

Just as a welfare recipient is entitled to receive benefits until he has been shown no longer to belong to the eligible class, so might injured workers be entitled to receive medical services until it has been shown that he has been cured.

By its terms, the Fourteenth Amendment applies only to deprivations by a state. However, this requirement of state action has often been held to include what are ostensibly private acts. Generally an act of a private individual (the carrier) will be designated state action if the state has been involved in a significant way in the particular act itself.

CONSPIRACY:

It has been consistently held in Illinois that the gist of a civil action based upon a conspiracy is not the conspiracy or combination in itself, but rather the overt acts committed in pursuance of the conspiracy. In other words, in order to render a conspiracy actionable, the conspiracy must be followed by a wrongful overt act in furtherance thereof.

The instant case is an unusual one indeed, and its unique facts must be placed in proper perspective before any legal principles can be applied.

The record clearly establishes:

1. That the defendants conspired and the conspiracy consisted in:

(a) The firing of petitioner which was due to petitioner's protected concerted activities under Section 7 of the National Labor Relations Act and/or the alleged conspiracy between the employer and the carrier, while petitioner was under medical treatment.

(b) Stevenson's conflict of interest in representing the carrier in the state of Indiana and petitioner in Illinois and allowing the statute of limitations to run before the National Labor Relations Board.

(c) Stevenson's failure to safeguard petitioner's federal and state rights and his failure to make any investigation, whatsoever, in the case.

(d) Wilfully and knowingly committed corrupt perjury and subornation of perjury by Cohn, attorney for the carrier and perjury by Phillips, Compensation Manager for the carrier.

(e) Failure of carrier to file accident report as prescribed by the Illinois Workmen's Compensation Act.

(f) Discrimination by Moulin and Getzendanner when petitioner requested the same relief as was afforded respondent at the Illinois Industrial Commission.

(g) Undated fabricated memorandum of medical services offer by Phillips and Cohn.

(h) Conspiracy by Moulin, Kern and Cohn in cost of preparation of the record for writ of certiorari to Circuit Court, Cook County, Illinois.

(i) State records missing.

(j) Federal records missing.

(k) Cohn's letter of 9/12/72 to carrier regarding J. Egan during Circuit Court hearing on 9/11/72.

(l) Dr. Shafer's records—refusal of courts to allow petitioner access to his own medical records.

(m) State officials wilfully and knowingly refuse to enforce Sections 6(b), 8(a), 8B, par. 5, and 12 of the Illinois Workmen's Compensation Act.

2. That the purpose of the conspiracy was to deprive petitioner of equal protection of the laws or equal privileges and immunities under the law.

3. A purposeful intent to discriminate.

4. That defendants acted under color of State law or authority.

5. That by acts in furtherance of the conspiracy the petitioner was injured in his person and property and was deprived of having and exercising a right and privilege of a citizen of the United States.

It is well established that a "Conspiracy" is a combination formed by two or more persons to effect an unlawful end; said persons acting under a common purpose to accomplish the end designed. Any one who, after a conspiracy is formed and who knows of its existence, joins therein, becomes as much a party thereto, from that time as if he had originally conspired.

In order to establish a "Conspiracy" it is necessary to prove a combination of two or more persons by concerted action to accomplish the criminal or unlawful purpose, but it is not necessary to constitute a conspiracy that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, by words or in writing, state what the unlawful scheme was to be, and the details of the plan or means by which the unlawful combination was to be made effective. In other words, where an unlawful end is sought to be effected, and two or more persons, actuated by the common purpose of accomplishing that end, "work together" "in any way" in furtherance of the unlawful scheme, every one of said persons becomes a member of

the conspiracy although the part he was to take therein was a subordinate one, or was to be executed at a remote distance from the other conspirators.

Such conduct by the defendants should not be condoned by this Court.

Although the arbitrator showed some diligence in rendering the award, which was totally inadequate, he was still most favorable to the respondent's interest as sustained by the record.

The decision of the Commission is not only arbitrary and capricious but is against the manifest weight and preponderance of the evidence and shows the lack of credibility of the commission in rendering its decision.

The proof of petitioner's allegations is further evidenced by Governor Dan Walker's Order and Announcement of the Anti-Corruption Rule, dated December 3, 1973. We quote in part:

> "Therefore, it is essential that we achieve honesty in all aspects of the Commission's work. It is equally essential that our efforts to remain honest are conspicuous and believable."
>
> "To those who are not moved by appeals to moral and ethical instincts we would point out that State bribery statutes cover this subject." EXH. #62, App. pgs. 332A-333A.

In petitioner's considered opinion, the evidence in the record, supported by all the surrounding circumstances, acts and deeds of all parties involved it is sufficient to sustain the finding that a continuing conspiracy still exists and that petitioner was denied due process and equal protection of law.

CONCLUSION

For the reasons stated, it is respectfully submitted that a writ of certiorari should issue to review the judgment and opinion of the Illinois Supreme Court.

Respectfully submitted,

ARNOLD L. CRANE, *Petitioner Pro Se*
1745 West Pratt Boulevard
Chicago, Illinois 60626
(312) 973-5821

Dated: October 15, 1974

APPENDIX

APPENDIX A

SUPREME COURT
OF ILLINOIS

United States of America

State of Illinois)
) ss.
Supreme Court)

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eleventh day of March in the year of our Lord, one thousand nine hundred and seventy-four, within and for the State of Illinois.

Present: Robert C. Underwood, *Chief Justice*
Justice Walter V. Schaefer
Justice Thomas E. Kluczynski
Justice Daniel P. Ward
Justice Charles H. Davis
Justice Joseph H. Goldenhersh
Justice Howard C. Ryan
William J. Scott, *Attorney General*
William G. Lyons, *Marshal*
Attest: Justin Taft, *Clerk*

Be It Remembered, that afterwards, to-wit, on the 29th day of March, 1974 the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

ARNOLD L. CRANE,

Appellant,

No. 45829 *vs.*

INDUSTRIAL COMMISSION OF ILLINOIS
CORBETTA CONSTRUCTION COMPANY,

Appellee.

Appeal from Circuit Court Cook County
Docket No. 45829—Agenda 16—January, 1974

ARNOLD L. CRANE, Appellant v. THE INDUSTRIAL COMMISSION *et al.*—(Corbetta Construction Company, Appellee.)

PER CURIAM: At the conclusion of a hearing before an arbitrator for the Industrial Commission, the claimant, Arnold L. Crane, was awarded compensation for back injuries arising out of and in the course of his employment with Corbetta Construction Company. The award was reduced by the Industrial Commission on review, and on *certiorari* the circuit court of Cook County affirmed the reduced award. Claimant appeals.

The claimant testified that on September 23, 1964, he suffered severe back pains while carrying plywood forms in the course of his employment as a carpenter for Corbetta Construction Company. He reported the injury to the construction foreman and was referred to Dr. Gerald Rabin, who, after examining claimant and taking X rays, prescribed muscle relaxants and advised claimant to go

home and rest. The claimant subsequently went back to work but had difficulty performing his usual duties due to continuing pain.

Dr. Rabin continued to treat him for about a month, but according to claimant his condition did not improve. He complained to the employer's workmen's compensation carrier about the treatment he was getting from Dr. Rabin, and requested that he be sent to another doctor. He was then referred to Dr. Sid Shafer, who took more X rays and advised the claimant that the X rays did not show anything unusual and that he was suffering from a strained back. Dr. Shafer prescribed more muscle relaxants. Claimant testified that when he went back to the insurance carrier's office and again complained about the medical treatment he was receiving, he was told that the company would not pay for any more medical treatment.

Thereafter, claimant consulted numerous doctors, including the Mayo Clinic, wore prescribed back supports, and was treated at various hospitals. He returned to the Mayo Clinic where he underwent surgery for a spinal fusion in July of 1966. Claimant testified that he was still suffering pain in his back, legs and feet at the time of the hearing before the arbitrator in 1968.

Dr. William Tansey testified on behalf of the claimant that his examination of the claimant on October 7, 1969, and a study of the X rays taken that date revealed that the claimant was suffering from degenerative arthritis and degenerative disc disease which "could well be" due to previous trauma although it was also possible those conditions could have been in existence for a long time. Various tests performed by Dr. Tansey indicated loss of motion in the back and legs.

Dr. Carlos Scuderi, whom claimant had consulted for treatment, testified for the employer that he first saw the claimant on February 24, 1965, and conducted various tests. He was of the opinion that the myelogram films taken by Dr. Rabin on September 25, 1964, were negative insofar as a herniated disc was concerned, although the X rays did show a slight narrowing of lumbrosacral disc spaces. He prescribed a bedboard, hot tub baths and heat-lamp treatments. He next saw him on March 17, 1965, at which time there was some limitation of motion but low-back tests proved negative. Even though examinations of the claimant on various occasions during the next several months indicated that the claimant's loss of motion was getting somewhat worse, surgery was not deemed necessary. Dr. Scuderi was of the opinion that the July 26, 1966, operative diagnosis of a degenerative disc could have resulted from trauma or other causes.

Dr. Robert Moore, another orthopedic surgeon, testified that his examination of claimant's back taken on December 28, 1964, revealed no pathology and that a myelographic study the same date also indicated no abnormality. His diagnosis of the claimant's condition as of that date was "low back pain of unknown etiology." Dr. Gerald Rabin, the orthopedic surgeon who had treated claimant for the month immediately following the injury, testified for the employer that he diagnosed the claimant's ailment on September 25, 1964, as acute sprain of the lower back. He stated that the X rays taken that day were normal and showed no pathology. On subsequent visits he noted some improvement in the claimant's condition, and he advised claimant that he could go back to work.

Howard Phillips, a workmen's compensation claims supervisor for the employer's workmen's compensation insurance carrier, testified that when the claimant com-

plained to him of the treatment being given by Dr. Rabin, he referred him to Dr. Sid Shafer. Thereafter, the claimant complained to him that he was also dissatisfied with the treatment rendered by Dr. Shafer, who had released him to return to work. When the claimant requested another doctor, Phillips advised him that the company would not be responsible for treatment by any doctor other than the two previously provided. However, he testified that claimant was never refused medical treatment and that the services of Dr. Shafer were retendered.

The arbitrator awarded $52 per week for 64 weeks temporary total incapacity for work; $52 per week for a further period of 200 weeks for permanent and complete loss of the use of each leg to the extent of 50%; and the sum of $3,968.30 for necessary first aid, medical, surgical and hospital services. No further evidence was heard upon review by the Industrial Commission. The Commission's decision on review eliminated the award for medical expenses and reduced the balance of the award to compensation at the rate of $52 per week for 37 5/7 weeks for temporary and total incapacity for work, and $52 per week for a further period of 60 weeks for permanent and complete loss of the use of the right leg to the extent of 20%, and permanent and complete loss of the use of the left leg to the extent of 10%. The probable cost of the record to be filed as a return to the writ of *certiorari* was fixed at $1,375. Claimant paid that sum under protest. His emergency petition for leave to use original documents and transcripts as a return to the writ of *certiorari* was denied, and the Industrial Commission proceeded to prepare and file a copy of the record for review. Claimant subsequently received a refund from the Commission in the amount of $562.85 from the $1,375 paid under protest.

Claimant appears *pro se* on this appeal as he did throughout substantially all of the proceedigs before the arbitrator, the Commission and the circuit court. In his brief in this court he sets forth 22 assignments of error, some of which are not germane to this appeal and most of which have as their underlying theme that he was the victim of a conspiracy on the part of various persons to deprive him of the award to which he was entitled. Those contentions which we consider relevant can best be considered on review by grouping them into four categories: (1) errors as to the admissibility of evidence; (2) prejudicial and improper conduct on the part of the arbitrator during the course of the hearing; (3) the Commission's decision was not supported by the evidence; and (4) claimant was improperly required to pay for the Commission's preparation of a copy of the transcript as a return to the writ of *certiorari*.

With respect to the alleged errors of the arbitrator in ruling on evidentiary matters, the claimant points to instances where he was not allowed to introduce medical reports of doctors who treated him, an instance where he was not permitted on cross-examination to have the witness interpret X rays already in evidence and certain rulings on hearsay evidence. It is unnecessary to analyze each of these contentions in detail. Suffice it to say that in each instance the arbitrator's ruling could be justified on some basis—for example, failure to lay a proper foundation for admission of the medical reports and an appropriate limitation of length of cross-examination of the witness who was asked to interpret X-rays. In no instance did the arbitrator's rulings on the admissibility of evidence constitute reversible error.

Claimant further contends that he did not receive a fair hearing before the arbitrator in that, among other things, he was required to proceed *pro se*, the proceedings before the arbitrator were conducted in a piecemeal manner and a continuance was improperly granted to the employer. As to the matter of the claimant appearing *pro se*, it is apparent from the record that claimant had been represented by at least two attorneys, both of whom withdrew or were discharged prior to the commencement of hearings. A third represented him during a portion of the hearings. Numerous continuances were granted to afford claimant an opportunity to secure other counsel, and it is clear that he cannot legitimately contend that he was not provided ample opportunity to secure representation. Insofar as the piecemeal nature of the hearing was concerned, it is true that there were some 15 separate hearings between June 3, 1968, and January 20, 1970, when the matter was finally concluded. However, the length of the proceeding was due in large part to the claimant's presentation of multitudinous exhibits and his lengthy cross-examination of the employer's witnesses. Under the circumstances, the necessity for separate hearing dates was hardly attributable to either the employer or the arbitrator. We also do not concur with the claimant's contention that the arbitrator abused his discretion in allowing the employer a continuance to bring in additional medical witnesses. After reviewing the transcript of the proceedings in its entirety, it is apparent that the arbitrator, recognizing the claimant's handicap in appearing *pro se*, did all he could to assist him in the presentation of his case, and the claimant's argument that the arbitrator engaged in prejudicial and improper conduct is clearly without merit.

Claimant's argument that the Industrial Commission's decision should be set aside is based in part upon his assertion that the Commission determination was founded on fabricated evidence and perjured testimony. As we have stated on many occasions, it is primarily the function of the Industrial Commission to determine the extent of an injured employee's disability and in this regard to determine the weight to be afforded conflicting testimony, including conflicting views of medical witnesses, to draw reasonable inferences and conclusions from the evidence, and to determine disputed questions of fact. (*Keystone Steel & Wire Co.* v. *Industrial Com.* (1969), 42 Ill.2d 273.) The decision of the Commission on these matters will not be set aside unless contrary to the manifest weight of the evidence. This rule is also applicable in cases such as this where the Commission has reached a different conclusion from that reached by the arbitrator without having heard additional evidence. (*Esposito* v. *Industrial Com.* (1957), 12 Ill.2d 305.) Upon review of all the evidence, we are of the opinion that the decision of the Industrial Commission is not against the manifest weight of the evidence either as to the extent of disability caused by the September 24, 1964, accident or as to claimant's entitlement for reimbursement for medical services and hospitalization he incurred on his own over and above that provided by the employer.

In support of his contention that he was entitled to a refund of the full $1,375 deposited with the Industrial Commission as the probable cost of preparation of the record as a return to the writ of *certiorari*, claimant relies on our decision in *Saldana* v. *Industrial Com.* (1972), 53 Ill.2d 222. In *Saldana* we held that the provision of the Workmen's Occupational Diseases Act allowing a charge for the preparation of the record for review (Ill. Rev. Stat.

1969, ch 48, par. 172.54(f)(1)) authorizes a charge of 60 cents per page only for testimony taken before the Commission and does not authorize a charge for testimony or other matters which have already been incorporated in the record made at the hearing before the arbitrator filed with the Commission on review. The *Saldana* case was followed in *Moss Equipment* v. *Industrial Com.* (1973), 55 Ill.2d 261, which involved analogous facts under the Workmen's Compensation Act. In the case at bar, it appears that the sum of $720 withheld by the Commission may represent a charge of 60 cents per page for retyping and reproducing 1,200 pages of the original transcript of proceedings before the arbitrator already on file. If that is the case, then under the authority of the *Saldana* and *Moss Equipment* cases claimant would be entitled to a refund of that amount less any portion thereof attributable to additional portions of the transcript, if any, added by the Commission in compliance with its duty to prepare a true and correct copy of the testimony and all other matters in the record for review.

We have given consideration to the various other assignments of error raised by the claimant and find them to be without merit.

The judgment of the circuit court of Cook County affirming the Industrial Commission's award of compensation to the claimant is affirmed. However, the cause is remanded to the Industrial Commission for a determination of the refund due claimant in accordance with the views expressed in the *Saldana* and *Moss Equipment* cases.

Affirmed and remanded,
with directions.

APPENDIX B

CLERK OF THE SUPREME COURT
SPRINGFIELD
(Letterhead)

May 31, 1974

Mr. Arnold L. Crane
1745 W. Pratt Boulevard
Chicago, Ill. 60626

No. 45829 — Arnold L. Crane, appellant, vs. Industrial Commission of Illinois (Corbetta Construction Company, appellee). Appeal, Circuit Court (Cook).

You are hereby notified that the Supreme Court today denied the petition for rehearing in the above entitled cause.

Very truly yours,

Justin Taft
Clerk of the Supreme Court

APPENDIX C

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT—LAW DIVISION

ARNOLD L. CRANE,

Petitioner,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS
AND CORBETTA CONSTRUCTION COMPANY,

Respondents.

No. 71 L 9017

REPORT OF PROCEEDINGS had at the hearing of the above entitled cause before the Honorable ROBERT J. DOWNING, one of the Judges of said Court, on the 9th day of February, A.D. 1973.

PRESENT:

MR. ARNOLD CRANE,
appeared pro se;
MR. RICHARD RYAN,
appeared for the respondents.

THE COURT: The court has before it the application for Writ of Certiorari which was filed in this court on July 19, 1971 with respect to a matter that arose from the Industrial Commission in the State of Illinois.

The court has listened to the arguments of Mr. Crane who has appeared pro se, while I have been involved with this case, and also the attorneys who have been representing the respondents.

The court has reviewed and considered the voluminous record that has been filed in this matter as well as the abstracts of the record, and based upon the entire record, the court, first of all, would repeat the applicability of the case of Emory F. Meade v. Industrial Commission, 48 Ill. 2d, 215, which clearly indicates:

> "Upon a contest as to the record or award of the Arbitrator, the Industrial Commission has a right to review the evidence taken before the Arbitrator after considering any further evidence properly presented to it."

The Meade case holds, the Commission is not bound by any findings of the Arbitrator regardless of whether there has been additional evidence or simply reviews the record.

Based upon the entire record before the court that has been reviewed and various arguments that have been presented, the court finds:

1. The decision of the Industrial Commission is supported by substantial evidence.

2. It is not against the manifest weight of the evidence.

3. It is not arbitrary, unconscionable or capricious.

The action of the Industrial Commission will be affirmed and the plaintiff's complaint to reverse will be denied.

Prepare the Order.

APPENDIX D

BEFORE THE INDUSTRIAL COMMISSION
OF ILLINOIS

ARNOLD CRANE,

Petitioner,

vs.

CORBETTA CONSTRUCTION COMPANY,

Respondent.

No. 784 019

DECISION ON REVIEW

Petition to Review the Decision of the Arbitrator, filed by the RESPONDENT herein, and due notices given, the above entitled cause came on for hearing before the Commission at CHICAGO, ILLINOIS, on January 18, 1971; and oral argument had before the majority of the members of the Commission on June 9, 1971.

Upon consideration of the record herein and further proceedings had upon Review, the Commission is of the opinion that the Decision of the Arbitrator is erroneous. Said Decision is therefore set aside, and the following findings and Decision are hereby substituted in its stead:

THE COMMISSION FINDS:

1. That on the 23rd day of September, 1964, the Respondent was operating under and subject to the provisions of the Illinois Workmen's Compensation Act; that on said date the relationship of employee and employer existed between the Petitioner and the Respondent; that on the said date the Petitioner sustained accidental injuries arising out of and in the course of the employment;

and that notice of said accident was given the Respondent within the time required under the provisions of said Act.

2. That the earnings of the Petitioner during the year next preceding the injury were $9,672.00; and that the weekly average wage was $186.00.

3. That Petitioner at time of injury was 42 years of age, married, and had no children under 18 years of age.

4. That necessary first aid, medical, surgical and hospital services have in part been provided by the Respondent herein.

5. That as a result of said accidental injury the Petitioner was temporarily totally incapacitated for work for a period of 37 5/7 weeks, and is entitled to compensation therefor, as provided in paragraph (b) of Section 8 of said Act, as amended.

6. That as a further result of said accidental injury the Petitioner sustained the permanent and complete loss of the use of the right leg to the extent of 20% thereof and the permanent and complete loss of the use of the left leg to the extent of 10% thereof, and is entitled to compensation therefor as provided in paragraph (e) of Section 8 of said Act, as amended.

IT IS THEREFORE ORDERED by the COMMISSION that the Respondent shall pay to the Petitioner compensation at the rate of $52.00 per week for a period of 37 5/7 weeks, that being the period of temporary total incapacity for work for which compensation is payable.

IT IS FURTHER ORDERED by the COMMISSION that the Respondent shall pay to the Petitioner the sum of $52.00 for a further period of 60 weeks, for the reason that the injury sustained caused the permanent and com-

plete loss of the use of the right leg to the extent of 20% thereof; and the permanent and complete loss of the use of the left leg to the extent of 10% thereof.

IT IS FURTHER ORDERED by the COMMISSION that the Respondent shall have credit for all compensation, if any, heretofore paid to the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by the Respondent herein is hereby fixed at the sum of $5,800.-00; and the probable cost of the record to be filed as return to writ of certiorari is the sum of $1,375.00, payable to the Industrial Commission of Illinois in the form of cash, check, or money order therefor, and to be deposited with the Transcript Department of the Industrial Commission of Illinois.

DATED: June 28, 1971

John Moulin
John Moulin
Claude E. Whitaker
Claude E. Whitaker
Leroy E. Duncan
Leroy E. Duncan
Vincent J. Getzendanner, Jr.
Vincent J. Getzendanner, Jr.
Alexander P. White
Alexander P. White

INDUSTRIAL COMMISSION OF ILLINOIS
RBK

APPENDIX E

STATE OF ILLINOIS
INDUSTRIAL COMMISSION
160 N. LaSalle Street
Chicago Ill. 60601

NOTICE OF DECISION OF ARBITRATOR

Arnold Crane

Petitioner,

vs.

Corbetta Construction Company

Respondent.

No. 784019

To Petitioner, Arnold Crane, 1221 Sherwin, Chicago, Illinois 60626

Pet. thru—Mandel H. Stein, P.O. Box 536, Hibbing, Minn.

To Respondent, through Cohn, Cohn & Lambert, 228 N. La Salle St., Chicago, Ill.

TAKE NOTICE, that on the 4th day of March, 1970, there was filed with the Industrial Commission, at Chicago, Illinois, the decision of the Arbitrator in the above entitled matter, a copy of which decision is enclosed to you herewith; and

YOU ARE FURTHER NOTIFIED that unless a petition for review is filed by you with the Industrial Commission within fifteen (15) days after receipt by you of this notice and copy of such decision, and an agreed statement

of the facts appearing upon the hearing before the Arbitrator or a correct stenographic report of the proceedings at such hearing within (20) days, then and in that event the decision of the said Arbitrator shall be entered of record by this Commission as the decision of the Industrial Commission.

Dated at Chicago, Illinois, this 6th day of March, 1970.

INDUSTRIAL COMMISSION OF ILLINOIS

Jayne E. Price,

Secretary.

(SEAL)

STATE OF ILLINOIS

STATE OF ILLINOIS,)
) SS.
COUNTY OF COOK)

BEFORE THE INDUSTRIAL COMMISSION
OF ILLINOIS

Arnold Crane

Petitioner,

vs.

Corbetta Construction Company

Respondent.

No. 784019

DECISION OF ARBITRATOR

Notice and application for adjustment of claim having been filed in the above entitled matter, and Donald E. Callahan having been designated by said Commission as Arbitrator thereof, and said matter having come on to be heard before said Arbitrator at 160 N. LaSalle in the City

of Chicago, said County and State, on the 20th day of January, 1970 and prior thereto; and, after hearing the proofs and allegations of the parties hereto, and having made careful inquiry and investigation of said matter and being fully advised in the premises, said Arbitrator finds:

That on the 23rd day of September, 1964, the respondent Corbetta Construction Company, was operating under and subject to the provisions of the Illinois Workmen's Compensation Act; that on said date the relationship of employee and employer existed between the petitioner Arnold Crane and said respondent; that on the date last above mentioned said petitioner sustained accidental injuries arising out of and in the course of the employment; and that notice of said accident was given said respondent within the time required under the provisions of said Act.

That the earnings of the petitioner during the year next preceding the injury were $9,672.00 and that the average weekly wage was $186.00.

That petitioner at time of injury was 42 years of age, married and had no children under 18 years of age.

That necessary first aid, medical, surgical and hospital services have partially been provided by the respondent herein.

That petitioner is entitled to have and receive from said respondent the sum of $52.00 per week for a period of 64 weeks, that being the period of temporary total incapacity for work, for which compensation is payable.

That petitioner is entitled to have and receive from said respondent the sum of $52.00 per week for a further period of 200 weeks, as provided in paragraph (e) of Section 8 of said Act, as amended, for the reason that the injuries

sustained caused the permanent and complete loss of the use of the right leg to the extent of 50% thereof and the permanent and complete loss of the use of the left leg to the extent of 50% thereof.

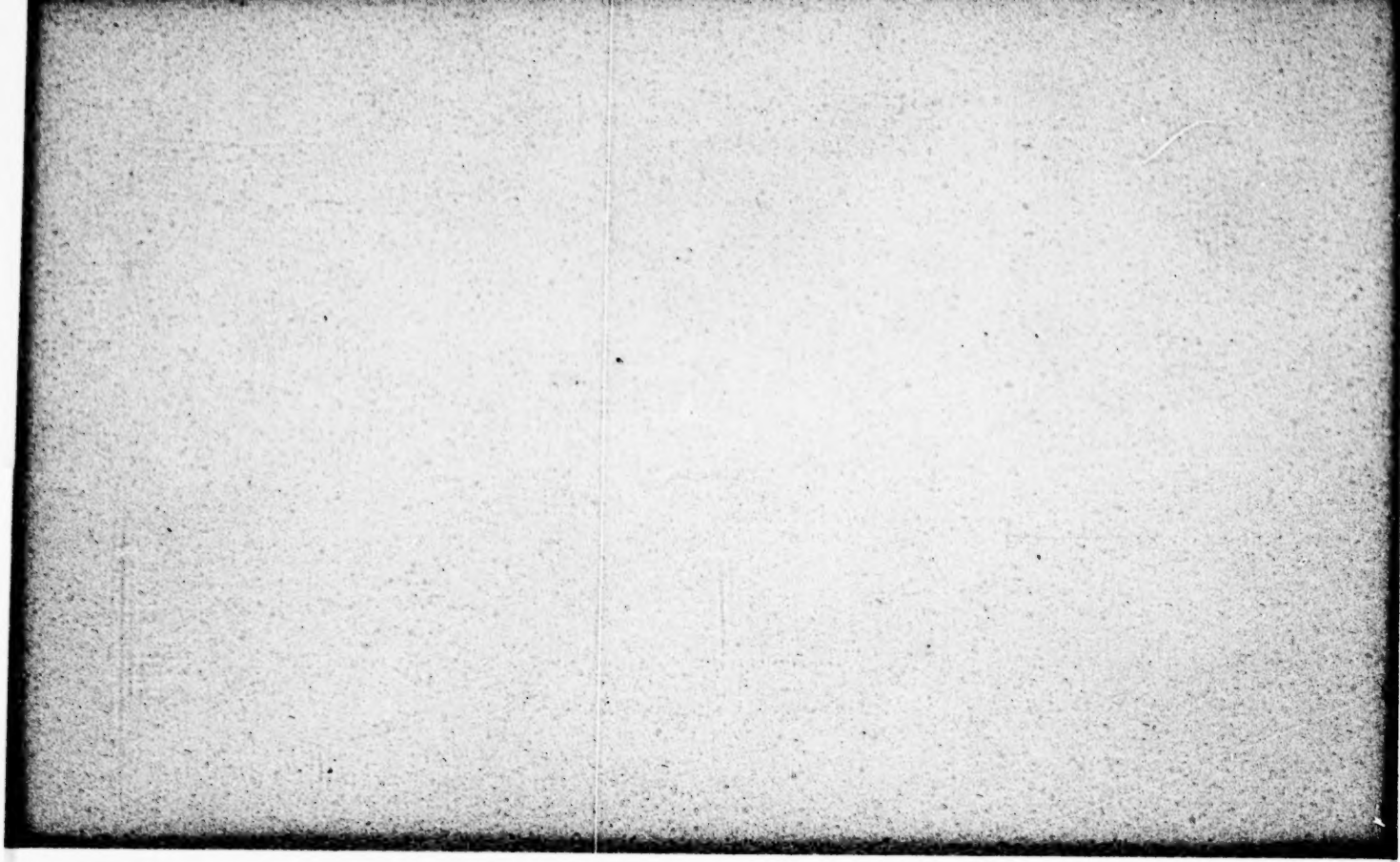
That the sum of $364.00 has been paid on account of said injury.

That said petitioner is now entitled to have and receive from the respondent the sum of $13,364.00, being the amount of unpaid compensation that has accrued, and to the further sum of $3,968.30 for necessary first aid, medical, surgical and hospital services, as provided in paragraph (a) of Section 8.

DATED and ENTERED this 4th day of March, 1970.

Donald E. Callahan

Arbitrator.



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NO. 74-457

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

ARNOLD L. CRANE,

Petitioner,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS and CORBETTA CONSTRUCTION COMPANY,

Respondents.

PETITION FOR REHEARING

ARNOLD L. CRANE
Petitioner Pro Se
1745 West Pratt Blvd.
Chicago, Illinois 60626
(312) 973-5821
(312) 443-6196

Date: January 2, 1975

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

Appealed to Illinois Supreme Court,
No. 45829
From Circuit Court, Cook County, Illinois
No. 71 L 9017
From Illinois Industrial Commission,
No. 784 019

NO. 74-457

ARNOLD L. CRANE,

Petitioner,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS and
CORBETTA CONSTRUCTION COMPANY,

Respondents.

PETITION FOR REHEARING

The Petitioner, ARNOLD L. CRANE, respectfully prays that this Honorable

Court grant rehearing and reconsideration of its decision of December 9, 1974 in the above entitled cause. The following reason and ground is respectfully shown.

The Illinois Supreme Court rendered its decision in the instant case on March 29, 1974, and 183 days later on September 27, 1974, the Court again rendered a decision relative to Section 12 of the Illinois Workmen's Compensation Act, Board of Education of City of Chicago v. Industrial Commission, 317 NE 2d 497 (1974). In the Board of Education decision, the Court strictly adhered to and enforced Section 12, whereas, in the instant case, the Court refused to enforce Section 12. In essence, the rationale used by the Court was that the Board (defendant) cannot have its cake and eat it too, but in the case at bar, the

Court allowed the defendant to have the cake and eat it too.

Because of the Doctrine of Separation of Powers, the legislature cannot abdicate its function to the judiciary by passing statutes which operate at the discretion of the courts or under which the Courts are allowed to determine the conditions under which the statute will be enforced. The Court should not be unmindful that due process questions under the Federal Constitution may be presented either by the failure of a state to follow its own rules of law or by state rules of law themselves serving as a deprivation of due process.

If the obvious meaning of a statute should be followed by harsh consequences such a result cannot influence the courts in administering the law. The respon-

sibility for the justice or wisdom of legislation rests upon the legislature, and it is the province of the courts to construe and not to make the laws.

In Burke v. Industrial Commission, 15 NE 2d 305, (1938), the Court said:

> "In seeking intent of the legislature which enacted statute, courts consider the language used, the evil to be remedied, and the object to be attained."

It is the obligation of the state courts, to guard, enforce and protect every right granted or secured by the constitution of the United States and the laws made in pursuance thereof, whenever these rights are involved in any suit or proceeding before them, for the judges of the state courts are required to take an oath to support that constitution, and they are bound by it, and the laws of the United States made in

pursuance thereof and all treaties made under their authority, as the supreme law of the land.

Petitioner clearly and concisely points out to the Court (Pet.Br.pps. 92, 93, 94 and 95) the flagrant abuses perpetrated against injured workers by the Commission and the refusal of the Courts to act in a responsible, judicial manner. As Justice Brandeis said in Id at 485 Olmstead v. United States 277, U.S. 438 (1928):

> "Decency, Security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for laws, it invites

> every man to become a law unto himself, it invites anarchy."

In an 1882 decision, United States v. Lee, 106 U.S. 196, 220, 1 S.Ct. 240, 261, 27 L.ed 171, the Supreme Court said:

> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives."

Petitioner quotes the last paragraph of Attorney Cohn's letter to his client, Consolidated Mutual Insurance Company, (Pet.Br.pg. 74), as follows:

> "It appears that Judge Egan is also very wary of Mr. Crane and is afraid of setting Mr. Crane off once again. In addition,

> I think he wants to have on the record all of Mr. Crane's peculiar notions so that a reviewing court will realize that there was no relief which Judge Egan could have given Mr.Crane under any circumstance."

In the aforementioned letter Cohn made a statement of fact, which is capable of the quality of truth or falsity, and was made by one of the co-conspirators, in furtherance of the conspiracy. Cohn must have a bona fide reason to make the statement. Knowledge in the mind of another is a subjective thing. It may be inferred or gathered from the outward manifestations, by the words or acts of the party charged with knowledge and from the facts and circumstances surrounding or attendant upon the act with which it is charged to be connected. It may be proven by all the facts and circumstances disclosed by the evidence taken in connection with the case.

This is another Overt Act by the defendants in the furtherance of the continuing conspiracy or a renewable conspiracy and, either way, the veracity and credibility of Louis J. Cohn, atterney for the insurance carrier, is still clearly destroyed unless he can prove, by the entire record:

1. That there are NO reversible errors in the entire record;

2. That the determination made by the Illinois Industrial Commission is not atainst the manifest weight and preponderance of the evidence.

Petitioner respectfully disagrees with Cohn's contentions. Petitioner has proved his case by the manifest weight of the evidence and the courts are absolutely in error in not receiving into evidence documentation that clearly

substantiates absolute proof of the erroneous decision made by the Commission.

The Commission allowed 37-5/7 weeks of temporary total disability (Pet.Br. App.pg.14) which was sustained by the reviewing courts. If a proper foundation had been laid with relevant, legal evidence could it have been arbitrarily disregarded and rejected as it was in the instant case. The position of the Commission is patently untenable, by attacking the credibility of petitioner and respondent's own witnesses without any justification whatsoever.

In Gideon v. Wainwright, 372 U.S. 335 (1963), the Court said:

> "* * * Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence."

In Larsen v. Glos, 85 NE 926 (1908) the court said:

> ". . . that neither the court nor the jury may reject uncontradicted testimony which is neither impeached nor intrinsically improbable."

The same rationale was used in Urban v. Industrial Commission, 214 NE 2d 737 (1966) in an opinion by the Illinois Supreme Court.

In C. R. Winn Drilling Co. v. Industrial Commission, 203 NE 2d 904 (1965) the court said:

> ". . .Temporary disability exists from the time of the injury until the employee is as far restored as the permanent character of his injury will permit. It is easy to determine when the period begins but it is not always possible to determine with mathematical exactness when it ends."

The Illinois Industrial Commission proceedings became a sham, mockery and a farce, as conclusively established by the record.

When quasi judicial proceedings sink to the unconscionable level this case has and the state courts refuse to put a stop to such proceedings and disregard their responsibility and duty to treat all citizens of the state alike, it is time that federal review becomes an absolute necessity.

The carrier was clearly cognizant in 1964, of its established liability and the seriousness of petitioner's injury which points to one INEVITABLE or irresistible conclusion. To mitigate this established liability they embarked on an intentional, concerted course of conduct by concocting the fabricated memorandum. To falsely substantiate their position that petitioner was offered the alleged medical treatment, a fabricated memorandum by Phillips and Cohn, acting

in concert, was offered into evidence by Cohn, but of course, at no time was it ever offered to petitioner or any of his attorneys.

It took Cohn approximately 1,285 days after the date of the accident and injury and 1,231 days after the carrier's physician discharged petitioner as being well to fabricate this memorandum (Pet. Br.p.15) and 1,578 days, approximately, to offer this memorandum into evidence. (Pet.Br.p.25)

The workmen's compensation Act is remedial in nature, and it should be liberally construed at all times. In the instant case, the respondent denied that the petitioner suffered a compensable injury, it denied an accident, it denied petitioner access to their medical reports during litigation, it denied and

disputed that petitioner needed medical treatment and Phillips testified on cross-examination (Pet.Br.p.28):

> "According to the information--the letter that you showed me, his opinion was that you needed no treatment and therefore he rendered none."

The record proves to an absolute certainty, petitioner's continuing need for medical care.

Obviously, the refusal of the carrier and their physician to supply their medical records to petitioner clearly establishes, by a preponderance of the evidence in the case at bar, that they have something to suppress. In Brady v. State of Maryland, 83 S.Ct. 1194 (1963), the court said:

> "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment,

> irrespective of the good faith or bad faith of the prosecution."

In the instant case, the carrier and the courts have persistently refused access to petitioner's medical records, i.e. the actual records of all communications that were made. Due to the nature of the case, it would be advisable to see all communications relative to the subject matter between the doctor and the carrier.

The only intelligent and logical explanation is that the release of these records would be highly prejudicial to the carrier, and place them in an inescapable, untenable position.

An employers liability to provide the necessary medical care contemplated by Section 8(a) of the Act, Ill.Rev.Stat. C. 48, Sec. 138.8(a) is continuous so long as such care is required to relieve the injured employee from the effects

of the injury. Efengee Electrical Supply Company v. Industrial Commission, 36 Ill. 2d 450, 223 NE 2d 135 (1967); Florczak v. Industrial Commission, 381 Ill.120, 44 NE 2d 836 (1942); W. J. Newman Company v. Industrial Commission, 353 Ill.190, 187 NE 137 (1933).

This obligation may extend indefinitely, perhaps for the remainder of the employee's life. Section 8(a) contemplates necessary medical care not only to "cure" but also to "relieve" from the effects of an injury, even if the injury is incurable the employer must continue to furnish medical attention to relieve an employee of pain or other injurious effects. No limitation can be placed upon the time such care shall be furnished in any particular case.

Attorneys acting to secure medical

care for their clients should first direct written notice to the employer stating the need for such care. However, petitioner's attorney Stevenson refused to request medical treatment for petitioner even though his physical condition was deteriorating and approximately 181 days after petitioner's accident and injury Stevenson wrote Dr. Scuderi:

> ". . . I have done nothing in respect of his claim, other than to advise him to seek competent medical treatment". and ". . . I should take some legal steps to protect his rights."

Approximately 1,113 days after petitioner's injury, and after Stevenson had reentered the case, Stevenson withdrew at the suggestion of his partners stating that he could not represent petitioner in a claim in which another client of their office (respondent's insurance carrier) was involved.(Pet.Br.pps.13,14, and 15).

It has been held that where an employer has knowledge of an injury and the necessity for treatment, or is in possession of facts from which he might reasonably conclude or believe that medical care is necessary, such employer cannot avoid liability for the cost and consequences of medical services obtained by the employee on his own as occasioned by the employer's failure or refusal to provide them. Skokie Valley Asphalt Co., Inc. v. Industrial Commission, 45 Ill.2d 333, 259 NE 2d 66 (1970).

Dr. Scuderi treated petitioner for approximately 435 days, from February 24, 1965 to May 4, 1966 and on May 17, 1966 filled out and signed a Continued Disability Report, stating petitioner's condition to be "unimproved" and"petitioner still totally disabled and unable to do any work."

Further, Dr. Scuderi testified as to petitioner's continuous disability. (Pet. Br.pps. 32-36). This testimony of facts and credibility of Dr. Scuderi was completely ignored and disregarded by the Commission and all subsequent reviewing Courts with no sound or unsound reason given.

The Waivers of Premiums from Bankers Life Insurance Company, from September 15, 1965 to January 17, 1973, also conclusively prove petitioner's disability (Pet.Br. pps. 38-39), which also was disregarded and ignored by the Commission and reviewing courts.

When the Commission disregarded and rejected the testimony of Dr. Scuderi as to the length and continuing disability of petitioner, they made another fatal error in attacking the credibility of the doctor.

When the Commission disregarded and rejected Dr. Scuderi's testimony, it was wilfully and maliciously done for four unsound reasons:

1. Because the doctor testified adversly against the defendant's interest,

2. Because petitioner was acting pro se,

3. Because of unconscionable prejudice and discrimination, and,

4. Because ? ?

Where the facts are in real dispute, it is the function of the higher courts, after a trial in the lower court, to review its legal conclusions and, with reference to its finding of fact, to determine whether they rest on sufficient evidence in the record.

The aforementioned facts evidence a clear and concise reason for the fabricated memorandum and the conspiracy.

This Court should not overlook the shrewd proverbial admonition that SOMETIMES TRUTH IS STRANGER THAN FICTION.

On the ground and for the reasons hereinabove stated, we respectfully submit that rehearing should be granted.

Respectfully submitted,

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